Supreme Court, U.S.
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No. 10-___

IN THE

Supreme Court of the United States

MARISSA SCHAIN, ET AL.,

Petitioners,

v.

BENNO C. SCHMIDT, *IN HIS CAPACITY AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THE CITY UNIVERSITY OF NEW YORK*, ET AL.,

Respondents.

On Petition For A Writ of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Public universities may impose student activity fees when their method of allocation is "viewpoint neutral" rather than based, for example, on the majoritarian referendum used to support the Wisconsin Public Interest Research Group ("WisPIRG"). *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 235 (2000). Although students are comparable to the nonmember employees in *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977) and dissenting attorneys in *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), the *Abood-Keller* requirement of a refund system for speech not "germane" to the organization's mission would be "unworkable" in the academic context. *Southworth*, 529 U.S. at 231-32. A university may, but need not, substitute an "optional or refund system" for viewpoint neutrality. *Id.*

This petition presents the following question:

When a public university offers students refunds of a referendum-allocated "PIRG fee" as an alternative protection to *Southworth*'s mandate of viewpoint neutrality, are the *Abood-Keller* cases instructive in determining whether the university's notice and refund procedures satisfy the First Amendment?

PARTIES TO THE PROCEEDINGS

Petitioners are Marissa Schain, Olivia Almengor, and Daniel Bogatin, students at Brooklyn College of the City University of New York.

Respondents are Benno C. Schmidt, in his capacity as Chairman of the Board of Trustees of the City University of New York, Philip Alfonso Berry, Valerie Lancaster Beal, Rita Dimartino, Freida D. Foster-Tolbert, Joseph J. Lhota, Hugo M. Morales, Peter S. Pantaleo, Kathleen M. Pesile, Carol A. Robles Roman, Marc V. Shaw, Charles A. Shorter, Sam A. Sutton, Jeffrey S. Wiesenfeld, Robert Ramos, Manfred Philipp, in their capacities as Trustees of the City University of New York, and Christoph M. Kimmich, in his capacity as the President of Brooklyn College.

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OPINIONS BELOW

The unpublished summary order of the United States Court of Appeals for the Second Circuit is available at 2010 WL 3736762 (2d Cir. Sept. 23, 2010) and reprinted in the Appendix at 1a-5a. The unreported orders of the District Court for the Southern District of New York are reprinted in the Appendix at 57a-65a; 6a-13a.

JURISDICTION

The United States District Court for the Southern District of New York exercised jurisdiction under 28 U.S.C. § 1331 and entered final judgment on March 16, 2010. The United States Court of Appeals for the Second Circuit exercised jurisdiction under 28 U.S.C. 1291 and entered judgment on September 23, 2010. Jurisdiction in this Court exists under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND UNIVERSITY REGULATIONS

The First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 are reprinted in the Appendix at 66a-68a. The Brooklyn College academic bulletin for 2007-2010 is reprinted in the Appendix at 69a-83a.[1]

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[1] Although no additional pages were cited by either party, the complete 406-page bulletin is now available at http://www.brooklyn.cuny.edu/bc/pubs/bulletin/2010/ug_bulletin2010.pdf and on the Second Circuit docket (10-1191-cv: # 125).

INTRODUCTION

Departing from *Southworth*'s "principal" First Amendment protection of "viewpoint neutrality" in the allocation of student activity fees, 529 U.S. at 233, CUNY colleges fund NYPIRG, the New York counterpart to WisPIRG, by referendum. Because referendum-based funding of such ideological groups is not viewpoint neutral, *id.* at 235, CUNY colleges have established a "refund system" for the "NYPIRG fee" as an "alternative protection."

In this case, the Second Circuit completely misconstrued *Southworth* in approving this refund system without requiring CUNY colleges to include any of the First Amendment safeguards from the *Abood-Keller* line of cases, particularly *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986). The lower courts reasoned that *Southworth*'s rejection of *Abood-Keller*'s "germaneness" requirement to the student activity fee foreclosed Petitioners' proposed remedy of an individual notice and narrowly drawn refund procedure for the NYPIRG fee. While *Southworth* expressed concern that the *Abood-Keller* remedies for 623 groups—refunds for non-germane speech—could be so "disruptive and expensive that the program to support extracurricular speech would be ineffective," 529 U.S. at 231-32, *whether NYPIRG's expressive activities are germane to CUNY's academic mission is utterly besides the point.* The only issue is whether the University's refund system, its own purported substitute for viewpoint neutrality, provides adequate alternative safeguards.

Southworth thus does not preclude the application of *Abood-Keller* to "some type of optional or refund

system" or a "system of that sort." *Id.* The Second Circuit's misinterpretation to the contrary has alarming consequences for hundreds of thousands of CUNY students who are compelled to fund campus chapters of NYPIRG—a controversial advocacy group—based on the results of referenda, provided that their local college makes a refund nominally, but not practically, available.

At Brooklyn College, constructive "notice" that the NYPIRG fee is refundable is dispersed on three non-sequential pages in a 406-page academic bulletin. Dissenting students are required, each semester, to appear in the offices of NYPIRG or the college's Central Depository during an unspecified two-week period to complete a NYPIRG refund-request form. Several weeks later, NYPIRG mails a refund check, without interest, to the student's home address. Not surprisingly, only an average of *one* student per semester avails himself of the College's refund system for the NYPIRG fee.

Other public colleges with referendum-funded PIRG chapters, such as Rutgers, notify students on their bills of the PIRG fee and include a "negative check-off" allowing deduction of the fee, either on line, by mail, or in person. Pet.App. 222a.[2] This readily available alternative furnishes an all-in-one individual notice and a narrowly drawn objection procedure that not only *fully* complies with *Abood-Keller*, but is far more convenient to the College,

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[2] The example Rutgers form for NJPIRG is also available at http://www.studentabc.rutgers.edu/forms/samples/Fall2008_SampleNewBrunswick.pdf.

PIRG chapters and, most importantly, dissenting students.

Rather than requiring such an alternative or at least an improved notice and a less cumbersome procedure, the Second Circuit eviscerated with one hand this Court's protection of viewpoint neutrality and substituted with the other an unclear and onerous refund system. If the decision below is allowed to stand, CUNY (and potentially SUNY) students will have no effective remedy against forced funding of the viewpoint discriminatory NYPIRG fee. The decision may also jeopardize the First Amendment interests of students in 15 other States where PIRGs have nearly 100 chapters on college campuses.

STATEMENT OF THE CASE

The material facts are undisputed.

A. Statement of Facts

1. CUNY's Funding of Registered Student Organizations, Including NYPIRG

CUNY is a public corporation authorized by the State of New York to administer the senior colleges, community colleges, and graduate schools that are part of CUNY. N.Y. Educ. Law § 6203. Brooklyn College is a "unit" of the CUNY educational system. N.Y. Educ. Law § 6201. CUNY comprises 23 institutions and serves over 231,000 degree-credit students and 230,000 adult, continuing, and professional education students. Pet.App. 151a-152a. Brooklyn College has more than 15,000 registered students. Pet.App. 153a.

The New York Public Interest Research Group ("NYPIRG") defines itself as a student directed

research and advocacy organization addressing such issues as "global warming," "energy policy" and "social justice." www.nypirg.org; *see also Carroll v. Blinken*, 957 F.2d 991, 994-95 (2d Cir. 1992) (affirming factual finding that NYPIRG is an ideological organization). On nine CUNY campuses, including Brooklyn College, NYPIRG operates chapters which are funded by student referenda. *See, e.g.*, Pet.App. 84a-92a; 180a-187a.

More "conservative" RSOs, such as the Brooklyn College Geology Society ("BCGS") and the defunct Students for Advocacy Group Accountability ("SAGA")—in each of which Petitioner Almengor was a member—promote responsible methods of environmental research that have brought these RSOs (and faculty) into sharp ideological conflict with both NYPIRG and University officials.[3]

On each campus, including Brooklyn College, students must pay student activity fees as a condition to register for classes and to obtain transcripts. Pet.App. 188a. These fees are segregated from tuition and are used, in part, to support the activities of registered student organizations ("RSOs"). Pet.App. 193a. At Brooklyn College, the current student activity fee for each semester is $100.55 for

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[3] *See, e.g.*, Pet.App. 232a-234a (reporting acrimonious "debate" between NYPIRG and BCGS); Pet.App. 235a-267a (reporting that NYPIRG follows dissenters and compiled information on them); Pet.App. 268a-278a (unpublished orders of state and federal courts against CUNY officials enjoining interference with SAGA referenda to reduce the NYPIRG fee); Pet.App. 279a-287a (dispute between 59 CUNY scientists and CUNY officials on whether NYPIRG should be investigated for "research misconduct").

full-time students and $61.35 for part-time students. Pet.App. 89a-92a, 194a.

Under CUNY fiscal regulations, all student activity fees must be supervised by a local campus "College Association"—a committee of thirteen members drawn from college administrators, faculty and students—except where the CUNY Board of Trustees "earmarks" funds to be distributed by another "allocating body." Pet.App. 92a, 108a-109a.[4] Once disbursed to RSOs, their budgets are reviewed by the College Association and their expenditures are subject to comprehensive and detailed fiscal audit procedures (a violation of which may result in "Disciplinary Proceedings"). Pet.App. 105a-106a.

Currently, NYPIRG receives student fees based on referendum at nine CUNY colleges. www.nypirg.org/oncampus/. The CUNY Board of Trustees has "earmarked" the "NYPIRG fee" to "another allocating body," NYPIRG itself (*e.g.*, Pet.App. 90a). CUNY also exempted NYPIRG from the fiscal regulations applicable to all other RSOs and the University Student Senate. *Compare* Pet.App. 100a-103a I-XIII *with* Pet.App. 103a-104a XIV). In accordance with model Appendix AA, NYPIRG provides only an unaudited annual report describing in general terms its chapters' activities for the academic year. Pet.App. 111a-116a.[5]

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[4] The complete fiscal regulations are available at http://www.cuny.edu/about/administration/offices/sa/advocacy-referral/fiscal_accountability_handbook.pdf and in the Record of Appeal below.

[5] This type of exemption appears to be common to PIRGs nationwide. *Southworth*, 529 U.S. at 226 (noting that

Generally, the Brooklyn College Student Government distributes student activity fees to numerous ideological, political and religious RSOs, which are subject to the general fiscal regulations of the University. At Brooklyn College, these RSOs have included Adventist Students for Christ, Anti-War Coalition, Asian Student Union, Association for Women in Science, Black Family Organization, Chinese Language and Culture Club, College Democrats, Desi Culture Club, Chinese Christian Fellowship, Dominican Student Movement, Hillel Club, Haitian American Student Association, Hispanic Society, International Socialist Club, Intervarsity Christian Fellowship, Islamic Society, Jewish National Fund, Lesbian, Gay, Bisexual, Transgendered Alliance, National Association for the Advancement of Colored People ("NAACP"), New York State Israel Public Affairs Committee, Pan-African Student Alliance, Puerto Rican Alliance, Ramadan Committee, Students for Academic Freedom, Revolutionary Alliance of Womyn, and the Young Republicans. Pet.App. 200a-208a, 211a-216a.

The budgets of such RSOs are limited to a "few hundred dollars" in their first year of operation and almost never exceed a few thousand dollars. Pet.App. 118a/141a; 175a-179a. Because NYPIRG chapters are funded by campus referendum, their annual budgets vary with student enrollment. In 2007-08, NYPIRG at Brooklyn College received $137,326.00. Pet.App. 123a.

WisPIRG's "lump sum" funding is not subject to general fiscal regulations).

At CUNY colleges, the funds earmarked by referendum are not subject to reconsideration, except at the initiation of students. Pet.App.172a. To place a referendum question on the ballot that raises or lowers the portion of the fee allocated to NYPIRG, students must petition 10% of the relevant student body—*i.e.*, full-time, part time, graduate, *etc.* *Id.* If a majority of voting students vote "Agree," the results are forwarded for approval to the Board of Trustees together with the recommendation of the local college president. *Id.*; Pet.App. 180a-187a.

As a cumulative result of referenda in 1974, 1982, 1984, and 2007, the portion of the student activity fee allocated to NYPIRG at Brooklyn College has gradually increased to $5.00 and $2.00 for each full- and part-time student, respectively. Pet.App. 156a-157a, 163a, 169a, 89a-92a. The 2007 referendum also established for the first time at Brooklyn College a $5.00 NYPIRG fee for each of the college's two summer sessions. Pet.App. 91a-92a. The NYPIRG fee may not be reduced or eliminated at a CUNY college unless and "until superseded by a later referendum." Pet.App. 110a.

2. Brooklyn College's Notice and Refund Procedure for the NYPIRG Fee

The NYPIRG fee at CUNY colleges, unlike other portions of the mandatory student activity fee, is refundable. Student bills list the overall student activity fee, but not the portion allocated to NYPIRG, nor do they indicate that the NYPIRG fee exists or is refundable. Pet.App. 197a-199a. "Notice" that the NYPIRG fee is refundable is contained in the college's academic bulletin. Pet.App. 69a-83a. The bulletin directs students to appear in the offices of

either the college's Central Depository or NYPIRG. Pet.App. 82a. In either office, students must complete a NYPIRG refund request form providing their personal information, including home address. Pet.App. 134a, 137a & 230a. Neither the University nor Brooklyn College have set a time table for NYPIRG to respond to refund requests. Petitioners asserted and the courts below presumed that "several weeks" or more pass before NYPIRG mails a check to the student's home address in the amount of the original fee. Pet.App. 21a-22a, 138a.

Thus, the college's academic bulletin—a 406-page document—purportedly provides constructive notice that the NYPIRG fee is charged and refundable. The existence and amount of the "NYPIRG fee" is listed on page 29 in a section on "Tuition and Fees." Pet.App. 69a-74a. On page 32, in a subsection entitled "Refund Policy"—which otherwise addresses refunds of tuition in cases of withdrawal—the bulletin reads: "Refund of the NYPIRG fee may be obtained during a two-week refund period set by the organization." Pet.App. 78a. On page 61, an unrelated section of the bulletin containing a quarter-page description of NYPIRG indicates that the NYPIRG fee is refundable at the offices of the NYPIRG chapter or the college's Central Depository during a "two-week period." Pet.App. 82a. Neither pages 32 or 61 specifies the "two-week period."[6] Page

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[6] Although the bulletin expressly limits requests to an unspecified "two week period," Brooklyn College claimed that refunds are also available from the NYPIRG office "at any other time each semester." Pet.App.133a-134a. This unresolved dispute is immaterial to Petitioners' "*facial* challenge" to the bulletin.

61 of the bulletin does provide an unidentified telephone number—a direct line to the NYPIRG office at Brooklyn College.

When a student applies for a refund in Central Depository, his or her completed NYPIRG form is forwarded to NYPIRG which, in turn, mails a check of the fee to the student's home address. Pet.App. 134a-136a, 137a & 230a-231a. Such checks do not add interest to the NYPIRG fee for any period of time. Pet.App. 63a.

In other States, public colleges with referendum-funded PIRG chapters—such as Rutgers in New Jersey—notify students on their bills of the PIRG fee and include a "negative check-off" allowing deduction of the fee, either on line, by mail or in person. Pet.App. 217a-229a. Brooklyn College allows payment of tuition (and the unitemized student activity fee) "on line by mail [or] in person." Pet.App. 77a. To request a refund of the NYPIRG fee, however, a student has a single choice: to appear in person each term at the offices of either NYPIRG or the college's Central Depository. Pet.App. 82a. In either office, students must complete a NYPIRG refund request form requiring, *inter alia*, their names, student identification numbers, and home addresses. Pet.App. 134a, 137a & 230a-231a.

B. Proceedings Below

On July 28, 2008, Petitioners filed this civil action in the United States District Court for the Southern District of New York seeking declaratory and injunctive relief pursuant to the First and Fourteenth Amendments and 42 U.S.C. § 1983 against the Trustees of the City University of New York and the

President of Brooklyn College in their official capacities.

Petitioners alleged four claims: (1) the University's allocation of student fees to NYPIRG compels funding of a viewpoint discriminatory fee; (2) the University's exemption of NYPIRG alone from the fiscal controls applicable to all other RSOs is not viewpoint neutral; (3) the University facilitates NYPIRG's "domination of the forum"; and (4) the University's inadequate accounting for NYPIRG's student fee expenditures violates existing circuit precedent.

In November 2009, Petitioners moved for summary judgment on their first two claims. Pet.App. 120a. The University cross-moved for summary judgment seeking dismissal of all four claims. Pet.App. 129a. The District Court denied Petitioners' motion and granted in part and denied in part the University's cross-motion. Pet.App. 57a-65a.

The Court dismissed all of Petitioners' claims, except for the "as applied" component of their second count. That unbriefed claim was "not ripe for disposition on the present motion." Pet.App. 64a. The District Court dismissed the "facial" component of Petitioners' second claim, holding that the University's exemption of NYPIRG from general fiscal controls was based on "the different nature" of NYPIRG, not favoritism of the organization's viewpoint. Pet.App. 63a. Petitioners' third and fourth claims were dismissed because the outcomes of the first and second claims would control their disposition. Pet.App. 64a.

In January 2010, the District Court endorsed the parties' Joint Pretrial Order on the remaining "as applied" component of Petitioners' second claim.

Before the Court set a trial date, the University moved to dismiss pursuant to Federal Rule of Civil Procedure 12(c). The Court granted the motion, holding that Plaintiffs failed to state an "as applied" claim on count 2 distinct from their already dismissed facial claim. Pet.App. 9a-10a. Then, on March 16, 2010, the Court entered final judgment for the University. Pet.App. 12a.

On Petitioners' first claim—the only one at issue on this Petition—the parties disputed on their cross-motions the appropriate principles of review and whether Brooklyn College's refund system for the NYPIRG fee was constitutionally adequate. The starting point for both parties was *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217 (2000). There, as at CUNY colleges, RSOs were funded by local Student Governments upon application or—in the case of WisPIRG, a counterpart to NYPIRG—by referendum. *Id.* at 223-24.

The students alleged that the university violated their First Amendment rights by compelling them to fund RSOs advancing viewpoints with which they disagreed. *Id.* at 226-27. This Court held that "objecting students may insist upon certain safeguards with respect to the expressive activities which they are required to support." *Id.* at 229. "The principal standard of protection . . . is the requirement of viewpoint neutrality." *Id* at 233. The Court did not sustain the student referendum mechanism of the University's program, "which appears to permit the exaction of fees in violation of the viewpoint neutrality principle." *Id.* at 220.

In contrast to the University of Wisconsin, CUNY adopted a "refund system" for the referendum-based

NYPIRG fee as an alternative to viewpoint neutrality. Having done so, Petitioners argued that (1) *Abood-Keller* and their progeny set forth the appropriate standard to evaluate the constitutional adequacy of CUNY's notice and refund procedures; and (2) the applicable post-*Abood* case establishing the First Amendment requirements for a refund system is *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).[7]

The District Court observed that *Southworth* limited the protection of students' First Amendment rights to "viewpoint neutrality" and thus declined to impose an "optional or refund system" in compliance with *Hudson*. In short, "the union cases simply do not apply under *Southworth*" even when reviewing the University's own refund system. Pet.App. 63a.

Having rejected Petitioners' "much discussed" union cases, including *Hudson*, as applicable or instructive, the District Court framed the constitutional standard for evaluating CUNY's refund procedure as whether it was "sufficiently burdensome in some way as to take it out of *Southworth*." Pet.App. 62a. Applying that standard, the Court held that the University's refund system for the NYPIRG fee was "entirely unobjectionable." *Id.*

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[7] *Abood*, 431 U.S. at 222, required unions to provide a *pro rata* refund to dissenting nonmember employees of expenditures for ideological activities not "germane" to collective bargaining. Otherwise, non-union "employees might . . . have become 'free riders'" on "union representation that necessarily accrues to all employees." *Keller* extended *Abood* to bar associations. 496 U.S. at 17.

Finding no defects in the refund system, the District Court turned to Petitioners' argument that students were required to provide NYPIRG with an "involuntary interest free loan" in violation of *Hudson*. The Court held that "[a] refund system inherently involves some advance of money subject to repayment, and therefore, even if . . . for some small period of time NYPIRG gets what they would characterize as an 'interest free loan,' that would be immaterial . . . ." Pet.App. 63a. The Court concluded that the dispute in this regard was a "trifle" over "as much as a nickel" or "50 cents." Pet.App. 64a-65a; *see also* Pet.App. 21a-22a ("So we're talking about an alleged involuntary loan of $5 for 3 or 4 months [at a time] which by my calculation is at 2 percent [interest] . . . Did you ever hear the maxim[] [*de*] *minimis non curat lex*?").

On March 31, 2010, Petitioners appealed to the United States Court of Appeals for the Second Circuit. On September 23, nine days following argument, the Court affirmed by summary order. Pet.App. 1a-5a. The Second Circuit also declined to apply *Hudson*'s procedural requirements—or any other level of constitutional scrutiny—to the University's refund system because:

> [T]he Supreme Court . . . has ruled that the 'union cases' do not apply to a university's assessment and distribution of a mandatory student activity fee. [Accordingly], the procedural requirements informing *Seidemann* [a Second Circuit case applying *Hudson* to union refund procedures] cannot be imposed in the instant action, and the challenged refund procedure, supported as it is by explanations offered by defendants below, is adequate as a matter of law.

Pet.App. 3a-4a (citing *Southworth*, 529 U.S. at 232).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW MISREADS *SOUTHWORTH* AND CONFLICTS WITH THIS COURT'S PRECEDENTS ON THE CONSTITUTIONAL REQUIREMENTS FOR A REFUND SYSTEM

Under *Southworth*, the minimum and appropriate First Amendment protection for fee-paying students is "the requirement of viewpoint neutrality." 529 U.S. at 233. When the fee of an ideological organization is not viewpoint neutral—as when determined by referendum—the University must substitute an alternative protection, such as an "optional or refund system." *Id.* at 232. To avoid compelled funding of expressive activities supported by a non-neutral referendum-based fee, the refund system may not be a sham, but must equal the "minimum" protection abandoned by the University. For example, an uninformative or inaccessible notice

combined with unnecessarily cumbersome procedures would be tantamount to no refund system at all. *Hudson*, 475 U.S. at 303 & n.12 ("First Amendment rights are fragile and can be destroyed by insensitive procedures") (internal citations and quotation marks omitted).

On the issue of whether a refund system affords sufficient protection for dissenters, the *Abood-Keller* cases provide the closest and most instructive analogy. *Southworth*, 529 U.S. at 231-32 ("the rights acknowledged in *Abood* and *Keller* become implicated" by compelled funding of expressive activity on college campuses). *Southworth*'s rationale for not requiring the *Abood-Keller* remedy—*i.e.*, a refund system for non-germane student fee expenditures—is supported by "the mandate of viewpoint neutrality." Given the absence of viewpoint neutrality in the allocation of the NYPIRG fee at CUNY, *Abood-Keller* is not only "implicated," but essential to avoid impermissibly compelled speech. The lower courts' holdings to the contrary are based on a fundamental misreading of *Southworth*.

Their reasoning—grounded in *Southworth*'s rejection of the "germaneness" requirement to the student activity fee—is flatly inconsistent with *Southworth*. While this Court expressed concern that the *Abood-Keller* remedies for 623 RSOs—refunds for non-germane speech—could be so "disruptive and expensive that the program to support extracurricular speech would be ineffective," 529 U.S. at 231-32, whether NYPIRG's expressive activities are germane lacks relevance. Rather, the sole issue is whether the University's refund system,

its own purported substitute for viewpoint neutrality, provides adequate alternative safeguards or, more broadly stated, what are the constitutional requirements applicable to "some type of optional or refund system" or a "system of that sort?" *Id.*

The Second Circuit turns *Southworth* upside down by reasoning that because a refund system is not required in a viewpoint neutral forum that a notice and refund procedure *adopted as an alleged adequate substitute for viewpoint neutrality* may evade constitutional review. The Second Circuit's rejection of this critical distinction resulted in approval of a refund system rife with constitutional defects and endorsement of the principle that students may be compelled to pay a viewpoint discriminatory fee provided a refund is theoretically, but not practically, within reach—at least without the clairvoyance to find an opaque constructive notice followed by frenetic and burdensome efforts.

Finally, this Court's precedent on the requirements of a refund system in the *Abood-Keller* cases are highly instructive where the University uses a refund system for a referendum-based fee. While the notice and procedures for dissenting nonmember employees, bar members and students need not be identical, each must satisfy the constitutional *minimum* appropriate for their respective contexts. *Cf. Southworth*, 529 U.S. at 231 (discussing differing "means of implementing First Amendment protections" and noting that "form" which a constitutional rule assumes depends on context). CUNY's notice and refund procedure at Brooklyn College patently fails *Hudson*'s requirements and the Second Circuit, by misreading *Southworth*, endorsed

a wholly inadequate alternative to viewpoint neutrality.

In *Hudson*, this Court imposed three basic requirements, each of which applies to a University refund system. First, the union's refund procedures must be "carefully tailored to minimize the infringement" on dissenting employees' exercise of their First Amendment rights to object. *Id.* at 303. Second, the individual notice provided to nonmember employees must contain adequate "information about the basis for the proportionate share" of the fee due to the union. *Id.* at 306. Third, the refund system may not use a "pure rebate approach," *i.e.* "a forced exaction followed by a rebate equal to the amount improperly expended." *Id.* at 303-06 (applying *Ellis v. Bh'd of Railway Clerks*, 466 U.S. 435, 443 (1984)). Otherwise, "the union obtains an involuntary loan" for expressive activities to which the employee objects and poses "the risk that dissenters' funds may be used temporarily for an improper purpose." *Id.* at 304, 305.

The application of *Hudson*'s requirements for the union to provide adequate individual, not constructive, notice and to "minimize the infringement" with less cumbersome procedures supports the use of Rutgers' semester-by-semester optional or negative check off system for NJPIRG—a readily available alternative which resolves *all* the defects in CUNY's procedure, including involuntary and interest free loans. Pet.App. 222a; *supra* n.2. Alternatively, and at minimum, CUNY's current notice and refund procedure for the NYPIRG fee should have been declared insufficiently tailored and the issue remanded for consideration under the

appropriate constitutional standard. Neither occurred and, as a consequence, CUNY students lack the protection of *either* viewpoint neutrality or an appropriately tailored refund system.

II. THE DECISION BELOW EVISCERATES *SOUTHWORTH*'S MINIMUM PROTECTION OF VIEWPOINT NEUTRALITY WITHOUT ENSURING SUFFICIENT ALTERNATIVE SAFEGUARDS

The Second Circuit's misinterpretation of *Southworth* has resulted in a "refund system" free and clear of any meaningful First Amendment scrutiny, eviscerating the protections afforded by this Court. Whether considered individually—or as more appropriate, collectively, *see Tavernor v. Ill. Fed'n of Teachers*, 226 F.3d 842, 849 (7th Cir. 2000)—CUNY's procedures fail even the lowest level of scrutiny and are not adequate "compensation" for removing the protection of viewpoint neutrality.

As noted, the Brooklyn College bulletin purports to accept refund requests during an *unspecified* "two-week period" to be set by NYPIRG or the college. Pet.App. 78a, 82a. A First Amendment notice—or any notice—requires at minimum a definite and knowable time frame without the need for a potential dissenter to conduct his or her own investigation. Second, the bulletin disperses relevant information about refund of the NYPIRG fee on three pages (29, 32, and 61) in a 406-page document without cross-reference and no single page provides complete and accurate notice (*i.e.*, a description of NYPIRG, the amount of the fee, and where refund requests are available during a two-week period). Pet.App. 69a-83a. Finally, the First Amendment requires

individualized notice where feasible, not constructive notice in a voluminous academic bulletin.

Assuming a student discovers the constructive notice in the college bulletin, he or she then encounters an extraordinarily cumbersome objection procedure, which lacks any rational justification and allows NYPIRG to benefit from student inertia and deterrence in violation of *Hudson*. *Compare, e.g., Shea v. Int'l Ass'n of Mach. & Aerospace Workers*, 154 F.3d 508, 515 (5th Cir. 1998) ("unduly cumbersome annual objection requirement [was] designed to prevent employees from exercising their constitutionally-based right of objection"); *accord Seidemann v. Bowen*, 499 F.3d 119, 124 (2d Cir. 2007) (["*Shea*] . . . followed *Hudson*'s admonition that a union adopt those reasonably practicable procedures that least interfere with an objecting employee's exercise of his First Amendment rights.") (internal quotation marks omitted); *Tavernor* 226 F.3d at 849 ("No sooner does the objector complete one round than, like Sisyphus with his rock, he must begin anew with another.").

As the Third Circuit explained in requiring a negative check-off box for referendum-funded NJPIRG:

> We have been presented with no convincing reason—besides the obvious motive to procure additional funding from those students who do not wish to join PIRG but who are indifferent enough to forego seeking a refund—why PIRG could not obtain its financial support through purely voluntary contributions.

Galda v. Bloustein, 686 F.2d 159, 169 n.17 (3d Cir. 1982).

CUNY colleges encourage payment of tuition and the unitemized student activity fee on line or by first class mail, Pet.App. 77a; however, to request a refund of the NYPIRG fee, a student must appear in person 2-4 times per year—depending on whether he or she registers for summer courses—to complete a NYPIRG request form for a $2.00-$5.00 dollar refund. Pet.App. 82a, 134a.

Further, the college in turn forwards the dissenter's name, home address, and student ID number to NYPIRG, which discourages students unwilling to reveal their identities and personal information to NYPIRG or even a college administration that sides with NYPIRG on controversial disputes. *Supra* n.3. Thus, the refund procedure here impinges *further* on students' First Amendment interests than ordinary "inertia" with a classic "chilling effect" on the exercise of their rights and requires a reasonable alternative that dispenses with the requirement to repeatedly confront NYPIRG or the college.

Not surprisingly, the undisputed (and unanswered) factual evidence also supported Petitioners' facial challenge. In 2008, even the College's Director of Legal Services Pamela Pollack and Defendant President Kimmich were unaware of page 61 of the college bulletin which has purportedly allowed students since 2003-04 to complete a NYPIRG refund request form with the college. Pet.App. 143a-146a, 82a. Additionally, Brooklyn College conceded that an average of only *one* student per term completes the NYPIRG refund request with Central Depository

including a year in which more than 1/3 of the electoral turnout voted against increasing the regular NYPIRG fee and authorizing summer fees. Pet.App. 135a, 180a-187a.

Finally, students repeatedly pay an involuntary interest-free loan for weeks, if not months, before receiving a check from NYPIRG for the exact amount of the fee paid. As in *Hudson*, 475 U.S. at 309, that poses the unacceptable risk that dissenter funds will be used, even if only temporarily, for an impermissible purpose. This safeguard against involuntary interest free loans should extend to any context in which State action poses a similar risk. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury."). Here, no reason, not even the insufficient one of convenience, has been or can be given to justify the contrary.

There are two permissible alternatives to CUNY's "pure rebate" approach: an "interest bearing escrow" account or an "advanced reduction" (or rebate). *Hudson*, 475 U.S. at 303-04. The lower courts considered neither of these applicable under *Southworth* and deemed the case a "trifle" over "as much as a nickel," Pet.App. 64a-65a, which stands in direct contrast to this Court's solicitous regard for other dissenting fee payers. *Hudson*, 475 U.S. at 306 n.15 (agreeing with James Madison on the "tyrannical character of forcing an individual to contribute even 'three pence' for the 'propagation of opinions which he disbelieves.'") (quoting *Abood*, 431 U.S. at 235).

In applying *Hudson* to this case, *Southworth*'s disjunctive phrase, an "optional or refund system," need not be read literally. Not having addressed the issue here—the constitutional requirements for a University's refund system—this Court should adopt whichever of the two satisfies *Hudson*. Rutgers' opt-out box for NJPIRG has not only been "workable" for more than two decades, but *more* convenient for all parties involved and the *only* alternative suggested in this litigation that eliminates all the above constitutional defects in CUNY's procedure.[8]

The negative check-off is the equivalent of an "advanced rebate" with a fair notice and objection procedure rolled into one. Pet.App. 217a-229a. Rutgers colleges notify students on their bills each semester of the NJPIRG fee and include the option to deduct the NJPIRG fee from their invoices, either on line or by mail. An interest-bearing escrow account would also solve the problem of interest free loans; however, because no amount of the NYPIRG fee is subject to arbitration to determine the "germane" share, but 100% of the NYPIRG fee is refundable, there is no rationale for denying the readily available alternative of an advanced rebate.

Further, the First Amendment permits and state or federal law authorizes unions to retain the portion of fees expended on collective bargaining efforts

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[8] *Galda v. Rutgers*, 772 F.2d 1060, 1068 & n.5 (3d Cir. 1985) (Rutgers must adopt procedure of Universities of Minnesota and Massachusetts which "allow students to decide in advance if they wish to support PIRG"); Pet.App. 217a-229a. Under *Southworth*, *Galda*'s remedy continues to be required because the referendum funding of NJPIRG is not viewpoint neutral.

explaining their choice between an escrow or advanced reduction (which may be extrapolated from the previous year's budget and "promptly" adjusted in arbitration for the current year). NYPIRG, in contrast, has no comparable legal authorization or mandate to represent students and no portion of the fee is due to the organization. *See also Carroll v. Blinken*, 957 F.2d 991, 1003 (2d Cir. 1992) (enjoining NYPIRG from deeming student fee payers to be automatic members). NYPIRG, therefore, has no "free rider" claim, as do exclusive bargaining agents, which must fulfill a duty of fair representation to all employees, including nonmembers. Based on this distinction between unions and NYPIRG, the University (and NYPIRG) have *less* of a state interest, if any at all, in allowing NYPIRG to retain the full fee and to provide refunds later on without interest.

In sum, the Second Circuit's misreading of *Southworth* to exclude *Hudson* or any comparable scrutiny of CUNY's refund system will, as occurred here, result in the approval of virtually any notice and procedure that the University proffers for PIRG chapters (or any other ideological RSO). As such, the decision below undermines both *Southworth* itself and the general presumption that "courts remain available as the ultimate protectors of constitutional rights." *Hudson*, 475 U.S. at 307 n.20.

III. THE DECISION BELOW MORE BROADLY THREATENS TO COMPROMISE THE FIRST AMENDMENT INTERESTS OF STUDENTS AT PUBLIC COLLEGES IN AT LEAST 15 OTHER STATES

Despite the lower courts' dismissiveness of Petitioners' claim, this Court has repeatedly commanded that "*whatever the amount*, the quality of [Respondents'] interest in not being compelled to subsidize the propagation of political or ideological views that they oppose is clear." *Hudson*, 475 U.S. at 305 (emphasis added). Furthermore, while the NYPIRG fee at Brooklyn College amounts to only $5.00 each term, none can deny that this yields more than $137,000 in unconstitutionally apportioned (and scarcely regulated) funding to annually. Throughout CUNY, NYPIRG chapters receive an additional $800,000 by referendum (and the only requirements for further increases in these fees are more student referenda).

The Second Circuit's approval of compelled funding of a discriminatory fee at CUNY alone without an effective remedy is more than sufficient cause for alarm as hundreds of thousands of fee-paying students attend public colleges at CUNY and SUNY in New York. In addition, ConnPIRG and VPIRG, located in Connecticut and Vermont, respectively, are within the Second Circuit. Nor should a wider impact be discounted as news of the decision below reaches the combined 100 PIRG campus chapters which are no doubt interested in the ideal system for maximizing their referendum (and non-referendum) budgets on campus. *See* www.uspirg.org/about-us/the-state-pirgs (identifying 26 state PIRGs, 16 of

which have one or more student fee funded chapters on University campuses). Universities and colleges all across the country may even seek to maximize the fees of favored RSOs other than PIRG chapters—liberal or conservative—with a CUNY-style constructive notice and cumbersome procedure instead of an existing optional check-off box on bills, a narrowly drawn refund system, or a viewpoint-neutral method of non-referendum allocation.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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DECEMBER 17, 2010

APPENDIX A

10-1191-cv

Schain v. Schmidt

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 23rd day of September, two thousand and ten.

PRESENT: ROGER J. MINER,
PIERRE N. LEVAL,
RICHARD C. WESLEY,
Circuit Judges.

MARISSA SCHAIN, DANIEL BOGATIN, OLIVIA ALMENGOR,

Plaintiff-Appellants,

—v.— 10-1191-cv

BENNO C. SCHMIDT, PHILIP A. BERRY, VALERIE L. BEAL, RITA DIMARTINO, JOSEPH J. LHOTA, HUGO M. MORALES, PETER S. PANTALEO, KATHLEEN M. PESILE, CAROL A. ROBLES-ROMÁN, MARC V. SHAW, CHARLES A. SHORTER, SAM A. SUTTON, JEFFREY S. WIESENFELD, CHRISTOPH KIMMICH, FREIDA D. FOSTER-TOLLBERT,

Defendant-Appellees.[*]

FOR APPELLANTS: PHINEAS E. LEAHEY, Jones Day (Todd R. Geremia and Briana R. Hulet, of counsel), New York, NY.

FOR APPELLEES: ROBERT C. WEISZ, Assistant Solicitor

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[*] The Clerk of the Court is respectfully directed to amend the official caption in this action to conform to the caption in this order.

General of the State of
New York, New York, NY.

Appeal from the United States District Court for the Southern District (Kaplan, J.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the judgment of the District Court be **AFFIRMED**.

Appellants appeal from a judgment of the United States District Court for the Southern District of New York (Kaplan, J.). Having earlier dismissed most of their claims on a motion for summary judgment, the District Court disposed of the remaining claim on a motion for judgment on the pleadings, issuing its final Order on March 11, 2010. Appellants commenced the action below pursuant to 28 U.S.C. § 1331, the First and Fourteenth Amendments of the United States Constitution, and 42 U.S.C. § 1983, seeking declaratory and injunctive relief voiding Brooklyn College's procedure for refunding mandatory NY-PIRG fees to students who object to funding NY-PIRG, as well as CUNY's regulations governing expenditures by student organizations. We assume the parties' familiarity with the underlying facts, the procedural history, and the issues presented for review.

Appellants seek reversal of the District Court's ruling that the challenged refund procedure is adequate as a matter of law. They ground their argument on the line of precedent known collectively as the "union cases." *See, e.g., Chicago Teachers Union Local No. 1 v. Hudson*, 475 U.S. 292 (1986); *see also Seidemann v. Bowen*, 499 F.3d 119 (2d Cir. 2007). However, the Supreme Court of the United States has ruled that the "union cases" do not apply

to a university's assessment and distribution of a mandatory student activity fee. *Southworth v. Bd. of Regents of the Univ. Of Wis. Syst.*, 529 U.S. 217, 232 (2000). Thus, the procedural requirements informing *Seidemann* cannot be imposed in the instant action, and the challenged refund procedure, supported as it is by explanations offered by defendants below, is adequate as a matter of law.

Appellants further seek to overturn the District Court's dismissal of their challenge to the fiscal regulations governing NY-PIRG's campus activities. However, neither a facial nor an as-applied challenge to these regulations was presented in a manner sufficient to survive summary judgment. First, the regulations are facially unobjectionable, since they categorize organizations receiving student funds by their organizational structure, rather than their ideological viewpoint. Second, the record below does not support an as-applied challenge to the regulations, as no plaintiffs allege either that they or their organization were denied a particular classification under the regulations or that they suffered a cognizable injury as a result of the regulations' operation. Finally, the record below does not support a reasonable inference that the regulations, although facially neutral, operate as a pretext for viewpoint-based discrimination.

We decline to rule on Appellants' ancillary motions regarding retention of plaintiffs and reaffirmation of jurisdiction, since these motions were crafted with an eye to a possible remand for further proceedings, which possibility we hereby forego.

For the foregoing reasons, the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
/s/: Catherine O'Hagan Wolfe

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, et al.,

Plaintiffs,

-against-

BENNO C. SCHMIDT, et al.,

Defendants.

---x

USDC SDNY
DOCUMENT
ELECTRONICALLY
FILED DOC#: _____
DATE FILED#: 7/23/09

08 Civ. 6585 (LAK)

ORDER

LEWIS A. KAPLAN, District Judge.

For the reasons stated on the record in open court, plaintiffs' motion for partial summary judgment granting declaratory and injunctive relief on Counts I and II of the complaint (Docket Item 12) is denied. Defendants' cross-motion for partial summary judgment dismissing Counts I, III, IV, and so much of Count II as asserts a facial challenge to the fiscal accountability regulations (Docket Item 18) is granted. The only surviving claim is so much of Count II as challenges the constitutionality of the fiscal accountability regulations as applied.

SO ORDERED.

Dated: July 23, 2009

/s/

Lewis A. Kaplan
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

OLIVIA ALMENGOR, et al.,

Plaintiffs,

-against- 08 Civ. 6585 (LAK)

BENNO C. SCHMIDT, etc., et al.,

Defendants.

- x

MEMORANDUM AND ORDER

LEWIS A. KAPLAN, *District Judge.*

Plaintiffs here challenge on First Amendment grounds alleged viewpoint discrimination in the allocation and fiscal regulation of student activities fees at Brooklyn College of the City University of New York ("CUNY") in favor of the New York Public Interest Research Group, Inc. ("NYPIRG") by use of a referendum process to determine funding (count 1) and exemption of NYPIRG from fiscal controls applicable to other student funded organizations (count 2), an alleged practice of factual viewpoint discrimination against "Anti-NYPIRG" students (count 3), and alleged misallocation of student activity fees (count 4). In a bench opinion rendered on July 23, 2009, I granted the defendants' motion for partial summary judgment dismissing Counts 1, 3 and 4 and so much of Count 2 as challenged the constitutionality of the fiscal accountability

regulations as applied. Tr., July 23, 2009; Order, July 23, 2009. Defendants now move for judgment on the pleadings dismissing the remaining part of Count 2 on the grounds that any challenged application of the fiscal accountability regulations is time-barred and, in any case, that plaintiffs have not stated a legally sufficient basis for an as-applied challenge, essentially because the facts alleged by plaintiffs do not relate to any application of the fiscal accountability rules.

As defendants argue:

> "A 'facial challenge' to a statute considers only the text of the statute itself, not its application to the particular circumstances of an individual. An 'as-applied challenge,' on the other hand, requires an analysis of the facts of a particular case to determine whether the application of a statute, even one constitutional on its face, deprived the individual to whom it was applied of a protected right." *Field Day, LLC v. County of Suffolk*, 43 F.3d 167, 174 (2d Cir. 2006).

The essence of an "as applied" challenge therefore is a claim that the manner in which a statute or regulation was applied to a plaintiff in particular circumstances violated the Constitution, as for example where a facially valid statute was applied to a plaintiff in a discriminatory fashion based on animus toward the plaintiff's First Amendment protected views or activities. *See, e.g., Southworth v. Board of Regents of the University of Wisconsin System*, 307 F.3d 566, 592 (7th Cir. 2002).

As plaintiffs' contentions in the Joint Pretrial Order make clear, their grievance is not with the

manner in which the fiscal accountability regulations were applied to them. Rather, it is with (a) the fact that NYPIRG is classified under those regulations in a manner that is not to plaintiffs' liking, and (b) and their belief that the fiscal accountability regulations were motivated by favoritism toward NYPIRG and, presumably, the views it espouses. Joint Pretrial Order § IV, ¶ A. Indeed, their memorandum of law on this motion states their claim, at least in part, as being "that the purpose and effect in passing and administering these regulations was, and is, to benefit NYPIRG and to disadvantage all other Registered Student Organizations" and then goes on to complain of the structure of the challenged regulations, the latter being precisely the facial claim that the Court dismissed last July. Pl. Mem. 2-3. So plaintiffs' position boils down to the contention that the fiscal accountability regulations are unconstitutional as applied because their adoption years ago was motivated improperly.

Thus revealed, plaintiff's contention is not an attack on the manner in which the fiscal accountability regulations have been applied. It is an attack on the fact that they exist based on the assertion that they were adopted for an improper motive. It therefore is not an as-applied challenge, which is the only avenue that remains open to plaintiffs after the Court's July 23, 2009 decision. And even if the avenue were open, it would fail. "It is a familiar principle of constitutional law that [the Supreme] Court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive." *O'Brien v. United States*, 391 U.S. 367, 383 (1968); *accord*, *Epperson v. Arkansas*,

393 U.S. 97, 113 (1968) (Black, J., concurring); *In re G. & A. Brooks, Inc.*, 770 F.2d 288, 297 (2d Cir. 1985).

Accordingly, defendants' motion for judgment on the pleadings dismissing what remains of Count 2 is granted. As this disposes of the only claim remaining in this case, the Clerk shall enter final judgment of dismissal and close the case.

SO ORDERED.

Dated: March 11, 2010

/s/

Lewis A. Kaplan

United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

OLIVIA ALMENGOR, et al.,

Plaintiffs, 08 CIVIL 6585 (LAK)

-against- **JUDGMENT**

BENNO C. SCHMIDT, etc., et al.,

Defendants.

----------X

Defendants having moved for judgment on the pleadings dismissing the remaining part of Count 2, and the matter having come before the Honorable Lewis A. Kaplan, United States District Judge, and the Court thereafter, on March 11, 2010 having rendered its Memorandum and Order granting defendants' motion for judgment on the pleadings dismissing what remains of Count 2, and as this disposes of the only claim remaining in this case, directing the Clerk to enter final judgment of dismissal and to close the case, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons set forth in the Court's Memorandum and Order dated March 11, 2010, defendants' motion for judgment on the pleadings dismissing what remains of Count 2 is granted, and as this disposes of the only claim remaining in this case, final judgment of dismissal is entered; accordingly, the case is closed.

Dated: New York, New York
March 16, 2010

J. MICHAEL McMAHON

_____

Clerk of Court

BY: /s/

Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

OLIVIA ALMENGOR, et al,
Plaintiff,

v. 08 CV 06585(LAK)

BENNO SCHMIDT, et al,
Defendant.

----------x

New York, N.Y.
July 23, 2009
3:30 p.m.

Before:

HON. LEWIS A. KAPLAN,
District Judge

APPEARANCES

JONES DAY (NYC)
Attorneys for Plaintiff
BY: PHINEAS EDWARD LEAHEY, ESQ.

NEW YORK STATE DEPARTMENT OF LAW

Attorneys for Defendant

BY: CLEMENT JOHN COLUCCI, III, ESQ.

THE COURT: Plaintiff, are you ready?

MR. LEAHEY: Yes.

THE DEPUTY CLERK: Defendant, are you ready?

MR. COLUCCI: Yes, we are.

THE COURT: I would like to give counsel an idea of where I am on this before you start, so that I will get the best out of the argument.

Mr. Leahey, I'm frank to say, that I don't see how you could possibly say there are no material issues of fact with respect to your motion for summary judgement. So I'll hear you first, and briefly on that, and then I'll hear from the defense on their motion for summary judgement dismissing the case.

Mr. Leahey.

MR. LEAHEY: Yes, your Honor.

Your Honor, in response to your question about material facts, there are two questions of law before the Court that require no adjudication of facts.

The first is whether or not CUNY's opt-out refund system for NYPIRG is a defense to a referendum process that the Second Circuit has held to be viewpoint discrimination. The second question -

THE COURT: Well, it is not a matter of whether it is a defense, it is a matter of whether in light of it you have anything to complain about whatsoever.

MR. LEAHEY: Yes, your Honor, that's the way the defendants have framed the issue. From our

perspective, however, even before you reach the question of whether an opt-out system basically will preempt viewpoint discrimination claims on the theory that there is no force funding, as a threshold matter, the Court should determine that the refund system here is not narrowly drawn to protect defendant's pleadings. There is no sufficient notice. The only notice that students receive —

THE COURT: Well, your assertion that there is no sufficient notice, even if I buy your premise, is a disputed matter of fact.

MR. LEAHEY: Your Honor, I disagree, respectfully.

When I litigated the Seidemann case in the Second Circuit, we had a similar question about whether or not the dissenting nonmembers received sufficient Hudson notice. And the courts held on appeal from a summary judgement motion, that the question was solely one of law on the undisputed facts. And, here, there is no dispute between the parties that the only notice that students receive, if at all, is a buried reference in the college bulletin which states that —

THE COURT: Well, let me ask Mr. Colucci whether he concedes that the only notice is buried. Do you concede that, Mr. Colucci?

MR. COLUCCI: No, I don't, your Honor –

THE COURT: I didn't think so.

So, Mr. Leahey, let's have some fidelity to the record, okay. Don't ask me to just buy your characterizations because you wish to attach them.

MR. LEAHEY: Your Honor, if I can be more objective about the record, without characterization,

the record undisputedly shows that the college bulletin, which is a fairly lengthy document, contains two references to NYPIRG.

One is in a section on tuition and fees which notes the various fees to allocating bodies, including NYPIRG. And, in that section, there is no mention of where and how to obtain a refund. In another section, 30 or 40 pages later in the bulletin, there is a description of NYPIRG which then states that students can go to central depository or NYPIRG for a refund during a two-week period set by the organization. That, as a matter of law, is insufficient to provide students with notice about their right to object.

Secondly, your Honor, even if there were sufficient notice, and students were aware of their rights to request a refund, there is no dispute of fact that students must, after they pay the fee, go to the NYPIRG office or central depository, fill out a form which has their name, address, their student ID number, and —

THE COURT: They can go to the central depository if they don't wish to go to NYPIRG, right?

MR. LEAHEY: That is a procedure that the school purports to have adopted. And I will assume, for the purposes of this motion, that students can effectively go there.

THE COURT: All right. So —

MR. LEAHEY: And, in our opinion, as a matter of law that is insufficient for a number of reasons.

The first reason is that it requires students to fund NYPIRG in advance under what would conceivably be a viewpoint discriminatory system.

And, therefore, students should have a less restrictive alternative of an opt-out system.

THE COURT: Does your complaint, or anything in the record, indicate that during the period between the payment of the fee and the refund, the money has actually moved from CUNY to NYPIRG?

MR. LEAHEY: Yes, your Honor. The record indicates —

THE COURT: Great.

MR. LEAHEY: I don't have the exhibit in front of me, but it's one of the exhibits to the reply memorandum which, if I could — Your Honor, I'm recalling, now, that in the Morales affidavit, which defendants submitted in support of their motion, they talk about expeditious refunds. But the rules provide — and I don't have a cite at the moment, but I'll find one — where the NYPIRG fee, which is in the fiscal appropriations handbook, will be forwarded to NYPIRG in a lump sum no later than October in the fall, and March in the spring. And then the rules also provide, in the college bulletin I cited before —

THE COURT: Well, is it possible for a student to apply to the university before October?

MR. LEAHEY: The bulletin says the last two weeks of the semester, which would be after March and October. That is the two-week period set to request and obtain refund. You can request it and fill out the form, presumably, I'll give them that if that's possible — I don't know as matter of fact that it is. But even assuming it is, the way the system works is a lump sum is not sent until October or March, which we would say even if CUNY seizes the money it's a violation. But then the money is forwarded to

NYPIRG. And NYPIRG, indisputably, will have to write a check to the students without interest, which is an involuntary loan. And they receive this $5 check four times a year. Your Honor in Seidemann —

THE COURT: Four times?

MR. LEAHEY: Yes, because, if they attend school in the summer, they pay a fee for each of the two sessions. So, therefore, if each semester they have to object and receive a check from NYPIRG in response to that objection, and then the next semester --

THE COURT: What about the ordinary student who simply goes two semesters?

MR. LEAHEY: Your Honor, when I attended Brooklyn College, I went both summer sessions —

THE COURT: Well, I'm very happy for you.

MR. LEAHEY: — and my plaintiffs have, as well — my plaintiffs in this case have, as well. And hundreds of, thousands of students attend in the summer —

THE COURT: So the summer sessions are, how long, each one?

MR. LEAHEY: I believe there is five or six weeks.

THE COURT: Uh-huh.

MR. LEAHEY: And, your Honor, there is no notice about the summer refund. Because the summer fee for NYPIRG was enacted last in 2007, and first took effect in 2008. And students had no notice in the summer bulletin, at all, that they were entitled to a refund for the summer fees.

And, your Honor, in Seidemann vs. Bowen, the Second Circuit held, as a matter of law, that a 30-day

window to object once a year was an unconstitutional burden on a nonunion member's right to descent. When I say here is a matter of law a fortiori, to have to attend two times a year, or if you attend in the summer, four times a year for a minimal —

THE COURT: When was Seidemann decided in relation to Southworth?

MR. LEAHEY: Seidemann was decided in 2007.

THE COURT: And Southworth?

MR. LEAHEY: 2000.

THE COURT: Go ahead.

MR. LEAHEY: The cases are consistent, your Honor.

In Southworth, Justice Kennedy never addressed the issue of the burdensomeness or notice related to the refund procedure. There was briefing in that case about the issue. And in dicta he referred to an optional refund system. But he never discussed whether or not the system that was presented, because there was none in that case, would be Constitutionally sufficient. And there is no doubt, your Honor, in our opinion, that if you cannot require, as a matter of law, a dissenting nonmember to object, once a year, in a 30-day window for a thousand —

THE COURT: If you talk this fast, you might as well have stayed home.

MR. LEAHEY: I'm sorry, your Honor.

THE COURT: I can't listen that fast.

MR. LEAHEY: Sorry, your Honor.

Apologies your Honor.

If a nonmember, under the controlling law of the Second Circuit in the union cases, cannot be required to object, with individualized notice, once a year within a 30-day window then, assuredly, students should not be required to object twice a year, or if they attend summer sessions, four times a year, without even sufficient general notice. That's a pure question of law, your Honor.

There may be other issues of fact on the record that may color the issues before the Court, but even if you put those aside, on the undisputed facts that I stated as a matter of law as the courts have held in the union cases, this procedure does not provide sufficient notice and imposes unnecessary burdens that violate the Constitutional rights of objectors.

Your Honor, the second question that's presented in this case as a matter of law, is whether NYPIRG's exemption —

THE COURT: Let me see if I have this right. Taking your assertions as to the facts, a 5-dollar fee gets paid somewhere in September. And if the individual applies for a refund, they get it back, December, January, right?

MR. LEAHEY: That would be correct, your Honor.

THE COURT: All right.

MR. LEAHEY: If the procedure is followed.

THE COURT: All right. So we're talking about an alleged involuntary loan of $5 for 3 or 4 months which, by my calculation at 2 percent, which I imagine is a generous estimate of what the City of New York pays for short term money these days, is 3 cents.

MR. LEAHEY: Yes, your Honor.

THE COURT: Right?

MR. LEAHEY: And my response to that —

THE COURT: Did you ever hear the maximum minimis non curat lex?

MR. LEAHEY: Your Honor, that doctrine does not apply in the Constitutional context. And the proof for that is the union cases. In fact, Hudson itself cites James Madison and Thomas Jefferson for the proposition that even three pence is a Constitutional violation —

THE COURT: When Jefferson was alive, three pence was money.

MR. LEAHEY: Yes, your Honor. But they were quoting that for the principle that the amount doesn't matter. In fact, in the Ellis case, Ellis vs. Railway Labor Clerks, the Supreme Court determined not only is there a claim under Elrod, that there is an involuntary loan for -- without interest, but even if you paid interest with the involuntary loan after the fact -- in other words, you got $5.03, the Supreme Court still said In Ellis, and repeated in Hudson, that the act of an involuntary loan, even with interest, states a Constitutional claim for nominal damages and for declaratory relief.

And so, your Honor, as a matter of principle, the Supreme Court in Constitutional law cases does not make this exception for de minimis injury. And the same principles apply in the student fee case that apply in the union case. There is no basis for distinction as a matter of law.

So, your Honor, on those three grounds, insufficient notice and unduly burdensome procedure

that doesn't allow opt-out the way they do at Rutgers for NYJPIRG, and the fact that students have to pay an involuntary loan, without interest — and even if they had interest, it would still be a claim under Ellis and Hudson -- for all of those reasons, this refund procedure, as a matter of law, on the undisputed facts, putting any other facts aside, entitles plaintiffs to summary judgement.

Your Honor, the second question of first impression before this Court is whether the exemption of NYPIRG from a panoply of fiscal controls applicable to all other student groups is —

THE COURT: At absolute minimum, that's a question of fact.

MR. LEAHEY: Well, your Honor, I think there is a question of whether, on the undisputed facts, this particular regulation is viewpoint or content based on the one hand, which would trigger strict scrutiny —

THE COURT: Well, it's very simple, they say it isn't.

MR. LEAHEY: Well, your Honor —

THE COURT: It's that simple.

MR. LEAHEY: — as you know, the characterizations don't control on summary judgement. It's the undisputed facts and then inferences that draw as a matter of law.

But, your Honor, even if we were to conclude, as you did in Weingarten, that the standard on the facts were indeterminable, suppose that we can't determine whether or not its' viewpoint or content based, triggering strict scrutiny, or it's a content-neutral law affecting time, place, and manner, in which case reasonableness in light of limited forms

purpose controls. Under either standard, your Honor, respectfully we think we prevail. But we also think that the strict scrutiny standard applies for the reasons we stated in our brief.

Your Honor, there another question that admittedly presents a more difficult question for the Court. Once the Court were to address, as we ask, and rule in our favor, that the refund procedure in this case analogously to the union cases, such as Hudson and Seidemann in the Second Circuit, is unduly burdensome and violates the first amendment rights of objectors, the result of that would be basically what you have at Rutgers for NYJPIRG, which is a voluntary check-off box on tuition slips which students see the term NYJPIRG fee and they check off I would like to opt out of funding this organization through my student fee. We have that in the record about NYJPIRG. That is the result their attempting to reach, with respect to invalidating the post hoc refund system. We believe as a matter of law analogous to the union cases, that this refund procedure violates the First Amendment.

Then the question becomes, even with an opt-out system, which we brief in the alternative, does that still allow this particular system of funding for NYPIRG. And that's a question that has not squarely been addressed by other courts, but it's still a question of law.

And, your Honor, on count two, there is no dispute here that the forum at Brooklyn College and at CUNY campuses, generally, created through the student fee, is a limited public forum for the purpose of exchanging religious, political, social, and ideological ideas between and among students. And

so under Amidon, viewpoint-based or content-based restrictions for differentiations that are within the parameters of that limited forum, or the purpose for which a limited forum was opened, are subject to strict scrutiny. Whereas content-neutral regulations are subject to whether or not they are reasonable in light of the forum's purpose, and are not a facade to viewpoint discrimination.

And, your Honor, as to whether as a matter of law we believe we prevail under both, I would suggest, your Honor, that if you look at the record in this case, and consider the justifications given by the affidavit of Fields in support of CUNY's differential regulations for NYPIRG, they are insubstantial and unconvincing to just in pretext, for two reasons. One is there is a very loose means/ends fit between the stated reason —

THE COURT: You know, I don't know, whenever somebody says something is unconvincing on summary judgement, the answer is always denied.

MR. LEAHEY: Respectfully, your Honor, there are many cases where the Supreme Court and the circuits have held, as a matter of law, that a justification given to support a restriction on first amendment rights, is subject, as a matter of law, on summary judgement. And it's possible for an explanation not to be sufficient as a matter of law under a legal standard, even if you take it at face value.

THE COURT: Yes, but that doesn't amount to unconvincing, you see? It may be unconvincing to me when a driver says that the light was green when he went through the intersection and hit the plaintiff, but that does not get him summary judgement.

MR. LEAHEY: Well, your Honor, I refer to a case in the First Circuit, called Ridley vs. Massachusetts Bay, 390 F.3rd. 6587. It was in the First Circuit in 2004. And, basically, what that case did, in a limited public forum context, is hold that the Court could determine there was pretext, analogously it quotes CF to the Title 7 cases, if there was a loose means/ends fit between the explanation given for the differential regulation and achieving its goal through that regulation. And in this case not only do we have a loose means/ends fit — and one which we, you know, suggest doesn't make any sense at all in light of its justification — but we also have a history here of undisputed facts favoring NYPIRG during the referendum process. Referendums that are removed from the ballot for reasons that don't prevent NYPIRG referendum from being added to the ballot, subsequently.

THE COURT: You'd better bring it to a conclusion.

MR. LEAHEY: Okay. Your Honor, another question I wanted to address here, because it seems to come up in CUNY's brief, they argue that the regulation 1611E which exempts NYPIRG is a practical consideration not related to viewpoint. And I would add that, even if the Court were not to agree with us that there is intent to discriminate here based on the undisputed facts and history, the court's have held you don't need a motive to discriminate in order to state a viewpoint claim.

And the Seventh Circuit case in Southworth cites a prior case to that effect called "Forsyth" in which the Court held that the City's innocent intent in

exempting from permit fees, a large political party, even if it was —

THE COURT: Let me ask you something else, Mr. Leahey.

MR. LEAHEY: Yes.

THE COURT: Where in your brief, or your complaint, do you assert that the refund procedure is inadequate.

MR. LEAHEY: In our brief or complaint?

THE COURT: Yeah.

MR. LEAHEY: In our complaint there is a provision, is paragraph which says that the NYPIRG fee contains no opt-out or opt-in provision, but requires a post hoc refund. And in our reply brief, we spend about five or six pages discussing the inadequacy of the refund.

THE COURT: So your assertion as to the inadequasy, insofar as your motion for summary judgement is concerned, is first made in your reply brief, right?

MR. LEAHEY: Well, it is also in response to CUNY's cross motion —

THE COURT: That's a different question.

But insofar as your motion for summary judgement is concerned, it is not an argument you made.

MR. LEAHEY: Your Honor, we did not make that argument because CUNY never raised it as a defense until their cross motion.

THE COURT: Well, it's your thesis that it's a defense. But as my opening question to you indicated, I reject that proposition.

MR. LEAHEY: Your Honor, respectfully, I don't know how, in the interest of justice, a party could brief an issue which the defense claims preempts our claims when they have not even raised the defense at all.

THE COURT: You could have approached the whole thing a little more honestly and candidly, that's how.

MR. LEAHEY: Your Honor, our complaint expressly states, and NYPIRG noted this in their advocate's brief, that students are entitled to a refund, and we stated that it's not an opt-out or opt-in, and it's post hoc. And based on those allegations, we were saying that the refund system is not a defense. I don't think that, respectfully —

THE COURT: Let me simply say, I find the explanation unconvincing.

Okay. Anything else on your motion?

MR. LEAHEY: Your Honor, we didn't discuss counts three and four.

THE COURT: I don't think it is necessary.

MR. LEAHEY: Okay. Thank you, your Honor.

THE COURT: That's not a subject of your motion, in any case, right?

MR. LEAHEY: No, your Honor.

THE COURT: Right.

Okay. Mr. Colucci.

MR. COLUCCI: Good morning, your Honor. I want to jump right into the question that seems to be exercising the Court on the question of refunds, refund procedure, notice, and the like.

Mr. Leahey relies on the union cases that do, in fact, hold that refund procedures are problematic because they allow the union the use of money for a period of time. He cites the principle back when three pence was money, that even being deprived even for a short time for a short amount against one's will is a first amendment violation. The problem is that the union cases don't govern here, Southworth does.

And Southworth explicitly rejected the germaneness test in the union cases, which have been so troublesome and contentious in those your Honor cases, but that's how they produce in the union cases. The Supreme Court said it is not the business of courts and third parties to decide what is or is not a proper use of student activity fee money, as long as reasonable procedures to protect first amendment rights are in place. And that's what makes Southworth and the fee cases different from the union cases, using union dues to pay lawyers to negotiate a contract germane —

THE COURT: But Southworth did not address the particulars of a refund procedure in order to take a case out of the union line of cases, did it?

MR. COLUCCI: That's right. It did not.

THE COURT: So why don't you address that.

MR. COLUCCI: Well, it is conceivable that a refund procedure could be so inadequate that it isn't a refund procedure at all, and doesn't solve the problem.

There is nothing in this record to suggest that. In fact, it wasn't even raised as an issue, as your Honor

pointed out, until late in the game. The parties knew all along —

THE COURT: But you rely on your cross motion —

MR. COLUCCI: Yes.

THE COURT: — on the availability of a refund, and they at least purport to dispute it is ready and sufficient availability.

MR. COLUCCI: Well, they purport to dispute it, but if they are going to raise an issue of fact about it, there is no question that there is a procedure. There are rules. If they were to bring in people who say I have had experience with this procedure, and it doesn't work, it takes forever, or I have to go through some contentious nonsense, rather than just say, I am a student, I want my money, here is where to send my check, that could be a problem.

THE COURT: Let's go through it piece by piece.

He says the only notice is a statement on, 40 pages later in the handbook, and it pertains only to the fall and the spring semester. Is that accurate?

MR. COLUCCI: I'm not sure about the summer, your Honor. But it is in the handbook like every other rule that students are expected to — are charged with knowledge and understanding of. You can't put everything on page 1 in 20 point bold type.

THE COURT: Well, of course. Anybody who has ever looked as a securities offering knows that. But is the handbook in the record?

MR. COLUCCI: A version of it is. I'm not sure if it is — it was the then current version.

THE COURT: Is this the City University Physical Handbook for Control and Accountability?

MR. COLUCCI: No, that was the student handbook. The relevant pages are at exhibit 2 to my declaration.

THE COURT: Okay.

MR. COLUCCI: If your Honor would find a full size copy of the entire handbook enlightening, we could provide it. But there are the relevant pages.

THE COURT: Well, please direct my attention in exhibit 2 to the refund language.

MR. COLUCCI: My apologies, your Honor. It is at exhibit 6. Other pages from the — there is other pages from the handbook, and they are at exhibit — as I say, my apologies. And that would be under the bold heading "Refunds," 1, 2, 3, 4 — last paragraph on these — on the second column in the page.

THE COURT: So it's just that last sentence on the first page of exhibit 6?

MR. COLUCCI: Yes, your Honor.

THE COURT: Okay. So that's the issue of notice. And then is there any evidence in the record, one way or another, with respect to when the refund periods are, and the interval between the payment of the fee, and the refund, and whether the two-week period set by NYPIRG governs refunds from the central depository?

MR. COLUCCI: I'm looking at the Morales affidavit. We don't have a timetable for payment, your Honor. But as far as I — but there is nothing in the record suggesting that it is unusually delayed. If the claim is that it is delayed, insufficient, it is people

claiming that it is insufficient to come forward with evidence that it is unduly delayed.

A student seeking — in paragraph 3 of the Morales affidavit, a student seeking a refund directly from NYPIRG may go NYPIRG's campus office currently located at 0302 James Hall at any time during each semester, as well as a specially publicized two-week period each semester and fill out a refund request form.

The alternative refund procedure, does not — it doesn't say that it is limited to that period. I — frankly, there is nothing in the record about how much longer you can go to the central depository, but they do process refunds — refunds do get processed.

THE COURT: So I see that in the Morales affidavit as you were indicating, a student can go at any time during the semester, as well as during a specialized two-week period each semester.

MR. COLUCCI: Yes; that's correct.

THE COURT: And fill out a form.

And then in the section dealing with the central depository, it's just silent on the timing, right?

MR. COLUCCI: Yes.

THE COURT: Okay. And what evidence is there, submitted on behalf of the plaintiffs, that would raise any issue of fact with respect to the assertions by Mr. Morales?

MR. COLUCCI: As far as I can tell, none.

THE COURT: Okay.

Okay. Thank you, you can go ahead.

MR. COLUCCI: All right. Now, the distinction between the union cases and student fee cases, is

that the money being — the purposes for which disputed union dues are being used, are allegedly not germane to the purposes of the union. You can use union dues money to pay lawyers to negotiate contracts, to give you rights. You can't use union dues of objecting union members to elect democrats to legislate new rights. Sometimes it is reasonably clear, sometimes it is pretty contentious in union area, but the Court in Southworth said, we don't do that in the university case, because it is not for us, the courts, to determine, in a university setting, what is a germane use of student activity fees.

THE COURT: No, I understand the principle of your argument about the union cases, but I was really concerned about was the issue of — the factual issue —

MR. COLUCCI: Yes.

THE COURT: — of whether there is a refund procedure, whether there is notice of it, and what the procedure is.

MR. COLUCCI: Right. Well, there is one. There is notice of it. And we now know what the procedure is.

And, as far as I can tell, nobody has — it would be simple enough to test the procedure to see if it is inadequate if that is your claim. Send somebody to get a refund and find out. There is nothing in the record suggesting that it isn't exactly what it appears to be on the face of it.

THE COURT: Okay.

MR. COLUCCI: Now, a couple of other points. Your Honor grasped the principle, so I'll skip most of the rest of it.

Southworth says that a refund system is good enough, assuming it is a proper system. And we have discussed what the record is on that here. There other systems that — there are other systems that could be used. Mr. Leahey talked about New Jersey, NYJPIRG, or however you pronounce that, and the check-off system. That is a permissible system. The Supreme Court said as much in Southworth. But it's only one permissible system among many. And the choice of permissible systems, like the choice of what to spend mandatory student fee money on in the first place is choice for universities to make and not for third parties to say, well, there is a better way.

Unless your Honor has some particular questions about the fee and refund issue, I would like to move on to —

THE COURT: Well, that's one. Just drawing my attention to where, in your 56.1 one statement, the refund that was dealt with. I guess it's paragraph 20, right?

MR. COLUCCI: Yes. Paragraph 20, I suspect, since you pointed me to paragraph 20, there isn't —

THE COURT: Well, you have great faith.

Mr. Leahey wouldn't cut me that break I fear.

Maybe he would.

MR. COLUCCI: Actually, my faith — well, I wouldn't say my faith was misplaced, but 34 through 38 also addressed the refund system.

THE COURT: Yes. Okay. Thank you. Go ahead.

MR. COLUCCI: I would like to turn, then, if your Honor is satisfied, or at least satisfied that I have done what I can on the subject of the fee system, to

the question of financial regulation. And I think the important thing to remember here is that this is a facial challenge to the regulations that govern NYPIRG, as opposed to university student senate, as opposed to the College Republicans and the chess club or the Queens Student Services Corporation. This is an — I want to quote from page three of plaintiff's brief, because we couldn't put it better ourselves: To pass muster under a strict scrutiny standard which applies to classifications based on viewpoint — and then they go into the test of what strict scrutiny requires — the problem here is that to have a facial challenge, you need facial discrimination. Something on the face of the rules, the face of the regulation, that draws a viewpoint-oriented classification. Something like, for example, in the Burson case where you can engage in any kind of speech you wanted within a particular radius of a polling place, except political speech. That raised the question of viewpoint discrimination. You could go around with a sign saying Jesus Saves, but you couldn't go around with a sign saying, Throw out Espada, that raised a facial first amendment challenge. We don't have anything like that here. We have, not two sets of rules, the NYPIRG rules and everybodyelse's rules, but four sets of rules, for different kinds of organizations. And none of these sets of rules makes any reference, whatsoever, to the viewpoint or ideology of the organization governed by it, if indeed there is one.

If, for example, the College Republicans and College Democrats were run by different rules, you would have a facial problem. And you would need a very substantial justification. Maybe one of them has a history of embezzlement, has to work, and needs a

different system of regulation. But we don't have here a facial difference between the way NYPIRG is treated and the way other organizations are treated, that has anything to do with viewpoint. The bylaw, exhibit 1 in 1611E, doesn't even refer to NYPIRG, at all, by name. It's a generally applicable rule. If the Sierra Club or Federalist Society decided it wished to organize itself the same way that NYPIRG does, it could come in, it could compete for student votes, it could try to win referenda, and it would be perfectly appropriate and well within the language of 1611E, to make what are now the — we could call the NYPIRG rules because, right now, NYPIRG is the only institution that is covered by them. We could make the NYPIRG rules, into the NYPIRG Sierra Club rules, or the NYPIRG Federalist Society rules, or if you ended up with more than one organization, it would probably be some other title for those rules.

So the fundamental problem with the facial attack — and it doesn't depend on any issues of fact here, is that the system is what it is, the rules say what they say, and they don't say anything, and they don't do anything based on the viewpoint of the organization involved.

Now, I'm not going to suggest that an as-applied — anything about what an as-applied challenge might or might not be able to prove, because I'm not going to comment on the strength of a case I haven't seen. But I think that's the fundamental problem and the facial challenge to the funding regulations. They don't classify by viewpoint. They classify by objective criteria. Big, well-run professional organizations get different kinds of regulation from the chess club. And there are reasons for that.

Reasons that make some sense. Mr. Leahey disagrees with them. Thinks they are not very persuasive. And I'm not going to say that other rules are not possible. But that's not the question. That's a policy dispute people could have, it's not a legal issue.

And unless your Honor has some further questions on that point, I'll move on.

THE COURT: Go right ahead.

MR. COLUCCI: Now we come to the other two claims, one of which I understand and can deal with rather briefly, and the other which I have some trouble understanding, and maybe we can puzzle it out together. I'll go first to the fourth one, because it is the one I understand. There is a claim that CUNY is not enforcing the so-called Carroll rules, bunch of fiscal regulations applicable to CUNY, modeled whether — historically, whether they were modeled under rules adopted in Carroll or not, I simply don't know. But they do look a lot like the rules adopted in Carroll. But those rules are the rules of the board of trustees. We have adopted them, ourselves, under our own authority. They are not federal law. What petition — what plaintiff wants, plaintiffs want is an order from this Court that we should do a better job of enforcing our rules. And that is a straightforward Pennhurst issue under the 11th Amendment. You can't order a state agency to enforce its rules better, even if its rule look just like federal rules.

Now, there is also the subsidiary question of whether we're even violating our rules at all. And I think the record is reasonably clear that the real problem plaintiff sees is not that the rules are not being followed, but that the rules actually in place

are inadequate. That's something people can disagree about, and — but this is not the forum to discuss that. The rules don't require all that much. They do not require detailed audit of the annual statements that come in from NYPIRG.

Is it possible that NYPIRG is padding and xeroxing — oh, I suppose I should say "photocopying" fees, pocketing the money, and that we're not detecting it. That's entirely possible. And if we had some reason to suspect it, we could do something about it. But the rules do not require us to do the kind of audit that plaintiff seems to think we ought to do. So between it being a matter of state law that can't be enjoined by federal Court, and there not being actual allegations of a violation of the rules that exist, as opposed to the rules that plaintiff would prefer existed. And I think that claim ought to be dismissed out right.

Finally, we come to the third claim. I don't know what to call it. It's — that's where the bulk of the factual material comes from. Most of it is stale activity going back to the 1990s. Much of it is hearsay. Some of it doesn't involve anything that CUNY is alleged to have done. And none of it, as far as we can tell, is wrongful under any federal law that any of us know anything about.

At most, what it is, is a claim that because of the first amendment violations that plaintiff claims in the first and second causes of action, NYPIRG has an unduly heavy weight in the — you know, unduly large presence in the marketplace of ideas. Well, that's not an independent wrong. If the first two claims have merit, there is something that can be done about that. If they don't, there is no

independent violation simply because NYPIRG, for whatever reasons, being — well, had the administration well disposed to it, being organized, being a continuing operation with a lot of money. None of that raises a legal issue, none of that raises any kind of relief that anybody can foresee.

And NYPIRG doesn't always win these things, either. With all of the advantages that it's supposed to have, it was defunded in York College in 1987 when a referendum to defund it passed by the students. In 2008, rather, in New York City Technical College, there was a referendum to increase the NYPIRG fee. The referendum passed, but the president recommended against it, and the board of trustees agreed. So NYPIRG doesn't always win, either, at the student level or at the level of the administration.

So the third claim, your Honor, I simply don't know what it is. What independent actionable federal wrong is being alleged by —

THE COURT: I imagine Mr. Leahey will try to enlighten us.

MR. COLUCCI: All right.

If there is nothing further, I will be glad to sit down.

THE COURT: Okay. Thank you.

Mr. Leahey?

MR. LEAHEY: Yes, your Honor.

I wanted to pick up on a point you raised before about the unconvincing word that I used.

The reason I used that, it might not be the most appropriate word for this context, but your Honor in

the Weingarten case, you found the explanation for the school prohibiting, in a limited public forum, i.e. the mailbox room and teachers lounge of political buttons and so on, to be completely unreasonable. You found the explanation to be unconvincing. Now, I'm not sure you used the term unconvincing, but you found that the explanation given was simply not reasonable. And we're saying the same here.

With respect to exhibit 7, I wanted to also note that notice in the bulletin about the NYPIRG fee is also in my exhibit 1 to Leahey reply affidavit. It's 1D and E. And those have the two relevant pages that we're talking about here. One is a list of all of the fees, including the NYPIRG fee. And then several, maybe 30 pages later, is a refund that under — in the third or fourth paragraph it says the NYPIRG fee is refundable within a two-week period.

Your Honor, our argument on there is putting aside many of the factual issues that may be on the record today. All that we're saying, is that on the undisputed fact of this reference being in the incorrect place, not next to where the NYPIRG fee is listed, but in a separate place where students wouldn't normally find it, and where it is listed it should ordinarily be, and the fact that they to have fill out a form at all, giving their name, student ID number, and personal home address. And, your Honor, it is undisputed that whether they go to NYPIRG and do that, or they go to CD, CD still gives them, in the Morales affidavit, as well as Pamela Pollack's response to Foyle, the same NYPIRG form. And CD then gives the form to NYPIRG.

THE COURT: Where in the record do I find the later?

MR. LEAHEY: I'm sorry, the later?

THE COURT: That the central depository gives it to NYPIRG.

MR. LEAHEY: Because only NYPIRG can process the fee.

THE COURT: Where in the record do I find that?

MR. LEAHEY: Well, your Honor, I am not sure there is a specific place in the record where we can find that they forward the form to NYPIRG —

THE COURT: Well, if it is not there, it doesn't exist.

MR. LEAHEY: Right.

Your Honor, if I can point you to page 26 of exhibit 7 to my original set of exhibits. Page 26, specifically, of exhibit 7, which are the fiscal guidelines. There is a paragraph —

THE COURT: Yes. What about it?

MR. LEAHEY: There is a paragraph there which talks about the sending of the NYPIRG fee in lump sum to NYPIRG Incorporated, no later than October in the fall, and March in the spring.

Now, it would seem to defy reason — and CUNY hasn't said anything to the contrary, despite what we have claimed — that you don't go to the CD or to NYPIRG, for that matter, fill out this form, and then NYPIRG cuts you a check.

By the way, your Honor, just to go back to a question about what is in the record. Actually, there is an inference to be made from the record. I believe the Morales affidavit says, quite clearly, that NYPIRG sends a check to the student's home address. The only way NYPIRG could do that, is if

CD gave them a form with the home address. So I think that's fairly undisputed on record.

But, secondly, your Honor, if the fee is not even transmitted to NYPIRG until October and March, does it stand to reason that they processed the NYPIRG refund before NYPIRG receives a student fee? That's simply not the way it works. And, your Honor, whether it takes two weeks, three weeks, four weeks, or five weeks, to receive this refund without interest and a check from NYPIRG, for the amount involved it is simply too burdensome.

In the union cases, your Honor, we point out what has not been pointed out before, is the union has a duty under state law or federal law to collectively bargain, which entitles it to seize the fees in advance and to follow these various procedures, to not take the money without interest or for an involuntary loan. In those cases, the — in the case of PS v. CUNY and the Seidemann case, is a 1.1 percent of the annual salary that is taken. And the Second Circuit said, even though hundreds of dollars are involved in terms of what is prorated returns to the client, once a year within 30 days of sending in a form is unduly burdensome. How could it be that student, to get $5 back, every semester have to fill out a form, and start like Sisyphus with his rock, the whole process over again. By the time he gets the check, they are ready to fill out a form for another refund. And it's simply a less burdensome alternative under the First Amendment readily available, which is what NYJPIRG does at Rutger's Bank in the Third Circuit decision in Galda. And we see no reason, as a matter of law on the undisputed facts, that this is simply not permitted, even if you

put aside all of the other facts about does it take two weeks, three weeks, four weeks to get the check. That doesn't matter as a matter of law on this refund procedure. It should be preempted by an opt-out system.

Your Honor, on whether 1611E creates a facial system, there is no dispute on this record that the only extramural body in this case is NYPIRG. And to create a system in which one group that expresses ideology, whether it be on climate change, or healthcare reform —

THE COURT: There is another one, it is senate —

MR. LEAHEY: The University Student Senate, USS, receives a portion of the student fee and —

THE COURT: I get the distinct impression you make these bold statements, I then point out that you are misstating the record, and you have an explanation for the misstatement.

MR. LEAHEY: Your Honor, I think it's page 66 to —

THE COURT: I have very little confidence in the accuracy of these assertions you make, Counselor —

MR. LEAHEY: If I can refer —

THE COURT: — it is not helpful to your cause.

MR. LEAHEY: If I can refer you to the record, respectfully, I believe I can point out why USS is different.

THE COURT: I'm going to assume that it is different. But that's like saying that only one car passed in front of the building. And then when I say,

well, actually, I saw a red one and a green one, would you say the green one is actually different.

MR. LEAHEY: You Honor, though, this difference is material—

THE COURT: That's quite a mode of advocacy.

MR. LEAHEY: Your Honor, respectfully, this difference is material for First Amendment purposes—

THE COURT: Maybe so. But recognize it up front, and then argue it. Don't tell me a fact that is inconsistent with the record.

MR. LEAHEY: I apologize, your Honor. I was—

THE COURT: It's not the first time you have done it this morning, let alone in your papers.

MR. LEAHEY: Your Honor, respectfully, page 66 to 67 of exhibit 7 has a procedure for USS audits, which is through the research foundation, which also happens to impose fiscal controls on professors and students who do research through CUNY grants. And so USS is actually subject to an alternative strict audit procedure that, as we said in our brief, is the functional equivalent of CD by the campus. And so we argue that NYPIRG is under neither and, therefore, has its unearned advantage in expressing its view in both timing and nimbleness in the forum. And that is our argument.

Now, Your Honor may disagree as a matter of law, but our argument is that NYPIRG is the only group that has the special advantages in a limited forum, where ideological views are expressed. And if somebody wants to get fliers for an event, to express their viewpoint of Brooklyn College, it's undisputed in the record, this is what they have to do. They have

to, first, make sure they have a budget for it. If they have a budget for it, they have to make sure that the line item covers fliers. And, if not, they can get a modification in excess of ten percent if they go through the Brooklyn College Association, which who knows how long that takes, and they want to express their view immediately. Then they have to get three bids from vendors, if they want to buy fliers that cost more than $250. And they have to also interview under Brooklyn College's rules with CD, to receive advance approval.

Then, finally, after all this red tape, they can access their student funds and put their placard up or go out in the campus and post it with fliers.

But NYPIRG, which has vast amounts of money, has no such administrative red tape or delay period. So they can immediately express their view in forum. And somebody who has an opposing view in the forum cannot.

USS is not only governed by a separate fiscal control, which makes sense, because it's not a campus group, it's a university student senate for the entire CUNY system. But it's the student government, basically analogous to each campus student government which, in turn, funds the ideological RSOs.

NYPIRG is only extramural group that is liberated from any fiscal controls which in turn allows them to express its advocacy viewpoint more effectively and more quickly than any other group.

And, your Honor, we're saying they need a substantial justification for this. And Field's affidavit is simply not only insufficient, but contradictory. The only reason that he gives for NYPIRG's separate

fiscal controls which honestly, respectfully, your Honor we say is pretext, is that NYPIRG conducts research from semester to semester. And because it carries over, they therefore need to have this exemption from fiscal controls. But, your Honor, professors as we have in the undisputed record, as well — Professor Seidemann testified and submitted receipts — where students from semester to semester who engage in research projects with CUNY grant money, are audited like USS through the research foundation, and submit line item budgets. And we have vouchers for every expense that they do.

So Fields' explanation that NYPIRG needs to be exempt in expressing its view because it does multisemester research projects, is simply too insubstantial. And I won't use the word "unconvincing," but it is as unpersuasive as a matter of law as the explanation given by the school board in the Weingarten case that you ruled on last year.

Your Honor, with respect to —

Oh, also, CUNY claims that it's not immediately apparent that this is rule is biased for NYPIRG, even though they admitted NYPIRG is the only one in the forum. Amidon makes fairly clear, if it makes perfectly clear, your Honor, that rules that have the potential to result in covert bias, are not viewpoint neutral and —

THE COURT: Am I right that the most recent event Seidemann talks about in his affidavit was 13 years ago, and he goes back as long as 20 and 20-plus years ago?

MR. LEAHEY: On the research misconduct, yes.

THE COURT: On anything.

MR. LEAHEY: I believe there may be receipts for research projects early in his affidavit that are for more recent times that were submitted as examples of how professors comply with research foundation's fiscal controls, and I—

THE COURT: It's somehow appropriate that he cites here, stuff about lava flows from the early Jurassic period.

MR. LEAHEY: Your Honor, those particular facts about the research misconduct were basically factual evidence which is not necessarily relevant to the summary judgement motion, but is certainly—

THE COURT: I'll say.

MR. LEAHEY: Well, your Honor, the fact that CUNY didn't investigate a credible claim, we think, shows some sort of bias in conjunction with the other evidence in the record. But we don't rely upon that for summary judgement. What is the importance about Seidemann's affidavit, is the first part in which he says, that here are some receipts, and here is how the research foundation rules work when we do multi-semester research.

THE COURT: Get back to the case, okay. I'm not interested very much in Mr. Seidemann's accounts of what was going on in the seventies and eighties.

MR. LEAHEY: Yes, your Honor. The most relevant aspect —

THE COURT: Before half your people were born.

MR. LEAHEY: Yes, that's true, your Honor.

The more relevant aspect of that affidavit, for this motion, is simply to confirm what the rules basically say, which is that USS and students and

professors who do multi-semester research, are governed by strict fiscal controls that David Fields states are not practical for NYPIRG to follow, because they do semester-by-semester research. But it seems to me to be an unreasonable explanation, when you consider that other groups, which do similar research, are bound by the same fiscal controls as every group except NYPIRG. It is not a reasonable explanation to exempt NYPIRG from fiscal controls, because they do multi-semester research, when every other group or individual, professor or student, who does multisemester research, is bound by strict fiscal controls.

THE COURT: If the defendants are right that the whole funding system comports with Southworth, your second cause of action falls apart, right?

MR. LEAHEY: No, your Honor.

THE COURT: Why not?

MR. LEAHEY: Because the second cause of action deals with differential fiscal controls. And so even if you had a refund system which, in theory, was unduly burdensome, you can not have one group which is liberated from controls in expressing its view in the limited forum that all student groups participate.

THE COURT: I don't understand what you just said, to tell you the truth.

MR. LEAHEY: Well, your Honor, to give an example, as I did before with respect to contentious issue that requires immediate campaigning. If I'm NYPIRG, I can go into the forum to convince students about my viewpoint without any hinderance from the fiscal rules that my opposing groups want to express

the opposite views, can't get their fliers out until two weeks later when they get approval from CD.

And how can there be a diverse place of ideas when one group can dominate, with their view, by being liberated from controls that apply to every other group. And so I don't think that —

THE COURT: Which plaintiff has standing to assert such a claim, if any?

MR. LEAHEY: All the plaintiffs. Any student who pays a fee, according to Southworth, including the Seventh Circuit opinion in Amidon.

THE COURT: So the standard, in your view, turns on whether the student pays the fee.

MR. LEAHEY: That is true.

THE COURT: And if the refund procedure is adequate to answer any objections to the payment, the claims relating to the payment of the fees, then why doesn't it answer any objection with respect to the fiscal controls?

MR. LEAHEY: Because — and, your Honor, I realize this is uncharted territory. But our perspective is, if you have a limited public forum for the designated purpose of expressing and exchanging political ideological, religious, and social views, the playing field in terms of the rules that apply to the expenditure of funds to the fee, whether it be refundable or not, have to be viewpoint neutral, because, otherwise, one group is going to be able to express their view —

THE COURT: Right. And if the refund procedure satisfies Southworth, then it is viewpoint neutral, or at least it is a substitute for viewpoint neutrality. Your people are being treated like all others similarly

situated. The point being, that NYPIRG and your people are not similarly situated.

MR. LEAHEY: Right.

I understand that argument, that if you are not required to fund it, and the procedure is Constitutionally adequate then you cannot complain about a majority referenda which allocates millions of dollars to student groups.

Now, we do make the argument, which you're not asking about now, that even an opt-out system, would have a problem, but that's related to this argument as to why it would have a problem under differential fiscal controls.

We look at it this way. You have a limited public forum which exchanges ideas. It is not Constitutional, in our view — and I realize this is uncharted territory because it has not been addressed to any Court — to have one group to benefit from differential rules that allow it to expend its money in a more immediate and effective fashion —

THE COURT: But the fallacy in the argument is that it happens that there is only one group that is subject to that particular set of physical constraints, but if you wanted to get the American Nazi party in there, and they were similarly situated to NYPIRG, they would be similarly situated, or the Young Republicans, or the Antique Airplane Flyers. I mean, you know, what's — what's the problem?

MR. LEAHEY: Right. Your Honor, even if there were another group — and I don't think on this record anyone can conclude that there is one, or that there could be one. But let's assume that your

hypothetical is correct, and that another group can come in, there are two problems with that.

The first problem is, even if it's an opposing viewpoint from NYPIRG, let's just say a different viewpoint from NYPIRG, then there's going to be more than one group in the forum that has unearned advantages than expressing its view. So, for example, the Jewish Defense League on campus, which is funded through the —

THE COURT: The reason for the differentiation between the RSOs and these organizations, like NYPIRG and the hypothetical organization we are talking about are — these differentiations are not content based, they are viewpoint neutral. I don't see the problem.

MR. LEAHEY: Well, your Honor, even they were viewpoint neutral, they'd have to be reasonable in light of limited forum. We don't think they are viewpoint neutral. And we don't think it would pass either test, because the justification given to have this separate set of controls is simply unreasonable. And if you look at Field's affidavit and take it apart, here is the reasons in the litigation, because they don't give this anywhere before the litigation, as to why NYPIRG needs to have this separate set of fiscal lack of restraint. And the reasons given simply are unreasonable, and can even pass the reasonableness test for a content-neutral regulation. But we think it is content based because the only group which receives this preference is NYPIRG. And no one disputes that the only extramural group since this regulation was enacted in 1974 —

THE COURT: Point to another one that attempted to qualify.

MR. LEAHEY: Well, your Honor, and the problem with that would be, assuming that would come to pass, is suppose you did have the American Nazi Party funded through this student fee with an adequate refund mechanism, or you had an opt-out system. The problem with that is, suppose the Jewish Defense League on campus wants to oppose the American Nazi Party's campaigning on a particular issue that arises in the media, instantly, the American Nazi Party can take the money it gets from the student fee —

THE COURT: I understand all that. You have said it about 12 times, and it's not that hard a concept.

But the concept that you are not confronting very well is that you have got what seems to me to be an entirely neutral set of justifications for treating campus-based RSOs differently from organizations like NYPIRG. And if that has the kinds of consequences you're talking about, well, you know, that happens.

MR. LEAHEY: Well, your Honor, there is two cases in the Supreme Court that may be analogous to this reasoning. One is Arkansas Writers Project, which is 481 US 221, which is in defendant's reply brief. And then Minneapolis Star, which is 460 US 575. There, the Supreme Court struck down selective tax exemptions for certain types of publications and admitted there was no motive to suppress content. And they still applied strict scrutiny because of the effect on speech.

And the same result occurred in this case called Forsyth. Now, admittedly, the facts are a little bit different. But in that particular case, as I

understand it, the City exempted from permit fees the large political parties on the grounds that it helped them economically to do so, and imposed the costs on other parties, they said we're not discriminating based on content. The Seventh Circuit still said, we accept the innocent explanation in theory, but it is still a disproportionate impact on opposing views and cannot therefore be justified under the First Amendment.

When you have this forum, you cannot have a disproportionate impact on these other opinions —

THE COURT: So, by your rationale, the New York election law, and comparable laws of virtually every state that I'm familiar with that differences between major parties and minor parties with respect to things like ballot access, are all unconstitutional.

MR. LEAHEY: No, your Honor.

THE COURT: Why not?

MR. LEAHEY: In those cases, although the Supreme Court upheld most of those, including Buckley v. Valeo, the separate campaigning restriction, because there was viewpoint neutral criteria. The criteria was do they gather an audience. In the Forsyth case, they distinguished that and said the criteria here results necessarily in discriminating against less popular or less majoritarian views. And it's not based on a neutral criteria as Amidon explained where, if NYPIRG can command students to come to their events, they can get that funding. If they can come up with a reason that's viewpoint neutral as to why NYPIRG should get this special privilege of exemption from control, then they can pass muster. But they don't even pass the

reasonableness test, because the explanations given, can only be pretext. I refer to —

THE COURT: It comes back to that, right?

MR. LEAHEY: Your Honor, that's the Ridley case, and they —

THE COURT: Your argument on count two comes back to your assertion that Fields' affidavit is pretextual.

MR. LEAHEY: That is the back-up argument. The first argument is that this regulation is truly on this record motivated by intent to benefit NYPIRG. And even if it isn't, to have a different —

THE COURT: What evidence do you have of that?

MR. LEAHEY: Well, if you look at the record, the referenda throughout the various years — and I realize these are old cases, because students are not going to apply for referenda if the school is not going to give them petitions. If they have to go to the Eastern District every time Brooklyn College denies petitions on NYPIRG funding, they are not going to do so. And the reasons given for denying it, for removing questions and for not giving petitions, are not the — NYPIRG receives it, even though they are in the same category. And so when there is a history here, which they have not disputed, the questions were removed from the ballot. For example, a question was removed because it used the prefatory word "should," the NYPIRG fee in 2007 was increased dramatically by the prefatory language "do you wish." That kind of disparate treatment on this record, which they have never disputed, it is in the documents, shows that students simply can't go to the administration as a neutral actor and compete on

a level playing field. We think in light of the lobbying partnership that CUNY and NYPIRG have —

THE COURT: Wrap it.

MR. LEAHEY: Sure.

In light of that evidence, as well as the loose means/ends fit in the explanation, we think as a matter of First Amendment law, the differential fiscal regulations that apply to this group, or even to extramural groups generally, is simply not justified under the First Amendment.

Does your Honor have any questions about counts three and four?

THE COURT: No. Thank you.

MR. LEAHEY: Thank you, your Honor.

THE COURT: Mr. Colucci, briefly.

MR. COLUCCI: Yes.

Your Honor, I have been at this too long to get any special pleasure out of hearing myself talk, so I'll simply answer any questions you may have.

THE COURT: Well, I'm giving you the opportunity. I don't have a particular question.

MR. COLUCCI: All right. Well, then, I will address a couple of things very briefly.

The question of the information that goes on the forms that have to be filled out. These are students, they are transients, they attend semester to semester, sometimes sporadically. Ms. Almengor was a student in the 90s, she is there now. There is really no other practical way to do this but on a semester-to-semester basis. Since you can't just walk in and get cash, there has to be some information that says who you are, that you're a student, you have paid the

fees, that you want the money, and where the check has to go.

I mean there is just no other way to make a refund system work than to give this sensitive information that I am a student, I want my money, and here is where you send it.

Sorry, your Honor, I'm having a ringing in my ears, I don't know why.

Again, on the question of the second count, again, there is no etiological distinction between the different kinds of regulation, four different kinds of regulation that different kinds of organizations have. Mr. Leahey doesn't think the regulations we apply to NYPIRG are a good idea. He may be right. But this is not the forum to discuss that sort of thing. There is no legal reason, there is no legal objection to the kinds of regulations that apply to NYPIRG. And if those regulations give it an advantage in the marketplace of ideas, well that sort of thing happens. Other groups can avail themselves of the same opportunities, nonideological groups could avail themselves of the same kind of regulation, and they would have no advantage at all in the marketplace of ideas because they don't participate.

I should point out one thing, your Honor. There is a reference to being audited by the CUNY Research Foundation. The research foundation is a private entity. It isn't CUNY. It isn't something that CUNY controls. Separately incorporated, I believe, in 1973 to manage grants and other sorts of things. I know that's not in the record, but it's the kind of thing we can look up and is judicially noticeable. So what the research foundation does, has nothing to do with CUNY.

And, with that, your Honor, unless you have any specific questions, I'll sit down.

THE COURT: Okay. Thank you.

We'll take a recess. In about ten minutes I may be prepared to rule on this.

(Recess)

THE COURT: Okay, you may be seated.

Mr. Leahey, I have one question for you.

MR. LEAHEY: Yes, your Honor.

THE COURT: Your opening memorandum at page 28 says that the fiscal control regulations are facially unconstitutional.

Is the second cause of action solely a facial challenge?

MR. LEAHEY: No, your Honor.

THE COURT: Okay. Thank you.

I am ready to rule on these applications. And I appreciate counsel's able arguments and good briefs.

I have before me the plaintiff's motion for partial summary judgement, granting declaratory and injunctive relief on their first and second counts of a four-count complaint.

I have also defendant's cross-motion for partial summary judgement dismissing the entire complaint.

Broadly speaking, the dispute relates to the fact that Brooklyn College, a part of the City University of New York, imposes a student activity fee, a portion of which, by virtue of decisions of authoritative university officers following student referenda is allocated to the New York Public Interest Group, which I will refer to as NYPIRG, and the plaintiff's

claim that the funding scheme violates principally their First Amendment rights because they are compelled in their view to support speech with which they disagree.

So far as the plaintiff's motion for summary judgement is concerned, it is abundantly clear to me on this record, that there are, at best, from plaintiff's point of view, material issues of fact and, indeed, I might say, moreover, since it is plaintiff's burden on this motion to establish the absence of genuine issues of material fact as to all matters as to which they would have the burden of proof at trial, a failure on the part of the plaintiff to satisfy that standard.

So the motion for partial summary judgement by the plaintiffs is denied.

So far as defendant's cross-motion is concerned, I will discuss in brief compass the highlights of my reasoning, subject to revision when I see the transcript, and to some further remarks I will make at the end.

The first count of the complaint challenges the imposition of the activity fee on first amendment grounds, based on the theory to which I averred earlier, namely that the plaintiffs are forced, by the imposition of that fee, to fund speech with which they disagree.

I am not writing on a clean slate on this issue which, in various forms under various different factual scenarios has been much litigated. The most recent pronouncement by the Supreme Court of the United States was Board of Regents of the University of Wisconsin v. Southworth 529 US 217.

Southworth held that a university is entitled to impose a student activity fee, a portion of which is used to advocate for views with which individual students upon whom the fee is imposed might disagree, provided either that the allocation of the money is viewpoint neutral or that the fee is either optional or refundable under an established refund system. The defendant's motion here essentially rests on the assertion that Brooklyn College and, more broadly, I suppose, the City University, had a refund system, and then comes — excuse me — and, therefore, comes within Southworth.

The plaintiffs, in their reply brief in support of their motion for summary judgement, which also was their brief in opposition to the defendant's motion, raised for the first time the contention that the Brooklyn College refund scheme is inadequate in that the notice is not sufficiently prominent, and that the system is, in various respects, too burdensome. For the sake of good procedural order, I note that that argument was raised for the first time in what was the reply brief on plaintiff's motion for summary judgement. It is not properly before the Court, and I do not consider it with respect to the plaintiff's motion.

It is properly before the Court with respect to the defendant's motion.

As to the claim that the notice is inadequate, I reject it. The Morales declaration indicates that the refund system is publicized in a way that I conclude is adequate. The exhibits demonstrate that. And I refer here not only to the exhibits of the Morales deposition, but to the exhibits more broadly. Plaintiffs have offered no admissible evidence

sufficient to raise a genuine issue of material fact as to the adequacy of the notice.

I reach the same conclusion with respect to their argument about the alleged undue burden of the refund process.

First of all, Mr. Morales' — or, actually, it may be Ms. Morales, I can't tell from the first name. Ms. Morales' declaration indicates that there are two available refund options. First of all, a student may go to the NYPIRG campus office at any time during each semester, as well as during a specially publicized two-week period each semester, and fill out a refund request form following which a refund is sent.

The applicant need provide only the applicant's school, name, address, student ID number, and the semester for which the refund is sought. That information is essential to ensure that the refund that is being requested, if paid, would actually go to somebody who had paid the fee in the first place.

The second option is that Brooklyn College, beginning in the 2000 to 2001 academic year, established a procedure whereby students could also request a refund at Brooklyn College's central depository where they were asked for the same information. And checks, when requested, were cut accordingly.

Now, on the motion for summary judgement, a movant is obliged to submit a statement pursuant to Southern District local civil rule 56.1 setting forth each material fact as to which it claims there is no genuine dispute, and citing admissible evidence supporting the assertion.

The defendant's local rule 56.1 one statement does just this with respect to the refund procedure, the relevant portions being paragraphs 20, and 34 through 38. Among other things asserted by the defendants, in paragraph 38 as it happens, is that the plaintiffs in this case are aware of their individual rights to obtain a refund and that, indeed, one of them has received a refund in the past.

All allegations in movant's rule 56.1 statement that are supported by admissible evidence are deemed admitted unless denied by the nonmoving parties' Rule 56.1 statement. And the denial is supported by admissible evidence. Paragraphs 20, and 34 through 38 of the plaintiff's Rule 56.1 one statement, Denise in general, states that the plaintiffs admit that the defendant's procedure purports to provide the terms that defendants have alleged and, for the most part, are silent as to anything else.

In the cases where that accurately describes their responses, the failure specifically to deny the defendant's factual averments and to cite admissible evidence to create a genuine issue of fact as to each of those averments constitutes a binding admission by the plaintiffs of the truth of the defendant's allegations.

There are a couple of places where the plaintiff's responses have gone slightly beyond the description I have given. For example, in paragraph 20, they admit that the defendant's procedure purports to provide for students to request a refund, which have various preconditions, but deny that students who object will always be given a refund.

The only evidence cited for that proposition is exhibit 1 to Mr. Leahey's reply declaration. Exhibit 1 of Mr. Leahey's reply declaration contains, or consists of, objections and responses to interrogatories, and the relevant portion which appears at page — pages two and three does not, in fact, raise a genuine issue of material fact as to paragraph 20. I would note that wherever, in response to paragraphs 20, and 34 to 38, the defendants — the plaintiffs purport to do anything other than admit that the defendant's claim, whatever they have claimed, they have cited to this very same exhibit to Mr. Leahey's affidavit. And, broadly speaking, it consists of an argument as to why the plaintiffs or others might not request refund at the NYPIRG office, but there is nothing here that is sufficient to raise a genuine issue of material fact as to anything asserted in paragraphs 20, and 34 through 38 of the defendant's 56.1 statement.

The bottom line is that the defendants have offered admissible evidence sufficient to demonstrate that they have a refund system which, on its face, is entirely unobjectionable. If in fact there was an argument to be made that it was sufficiently burdensome in some way as to take it out of Southworth, it was certainly the plaintiff's obligation to come forward with admissible evidence which, if believed, would have raised a genuine issue of fact on that proposition. They have not done so. And so their argument, with respect to the refund system, comes down to the contention that any refund system inherently involves some interest-free loan because a refund implies payment subject to later repayment, and that they should not be required, under the First Amendment, to pay their money in the first place, find it going into NYPIRG'S coffers, even if it

eventually comes back to them. They rely on a series of union cases that were much discussed in the briefs and at oral argument. The answer to this is twofold:

First, the union cases simply do not apply under Southworth. The Supreme Court there made that abundantly clear.

The second point is that the Supreme Court in Southworth indicated that a refund system would be a substitute for viewpoint neutrality in allocation. A refund system inherently involves some advance of money subject to repayment, and, therefore, even if plaintiffs are right in supposing and arguing that for some small period of time NYPIRG gets what they would characterize as an "interest free loan," that would be immaterial under Southworth.

So count one falls. Defendants are entitled to summary judgement and dismissal as to count one.

Count two points to the fact that at least campus-based student organizations that advocate points of view on the one hand and NYPIRG on the other, are subject to different fiscal controls. Brooklyn College argues that the difference is not related to viewpoint, it is related, instead, to the fundamentally different nature of the organizations, and to the very different needs for fiscal control with respect to the two kinds of organizations.

Insofar as plaintiffs' challenge is facial, that is to say, insofar as they claim that the system of financial controls at Brooklyn College with respect to student activity fee money is unconstitutional on its face, the argument is completely baseless. On its face, the system is viewpoint neutral, treats all similarly-situated organizations the same, and there is nothing more that needs to be said about it.

There is also an argument, I take it from Mr. Leahey's response to my question when I resumed the bench after the break, that there is an as-applied argument being made here. I have concluded that that contention is not ripe for disposition on the present motion. And, therefore, insofar as the defendants seek dismissal of an as-applied challenge to the fiscal control system in count two, the motion is denied.

So far as counts three and four are concerned, I accept entirely the defendant's argument on these points.

Just to make a very brief statement with regard to count three, even after hearing the arguments, I share the defendant's puzzlement as to what count three is really arguing. I can't see anything that could possibly come within count three, the outcome of which would not be controlled by the outcome of counts one and two and, therefore, summary judgement is granted dismissing count three.

The same is true for count four, essentially for the reasons stated in the defendant's papers.

Now, more broadly, except to the extent that I denied summary judgement dismissing count two with respect to the as-applied claim, I subscribe in substance to the arguments made by the defense with respect to the other matter.

I would also make one or two other brief observations.

The first is that this seems to me to be an essentially manufactured dispute over trifles. This interest-free loan argument might, in fact, be an argument over as much as a nickel over the full life of

this dispute, which has been going on for a long time. Maybe I'm wrong, it might even be 50 cents. But the notion that all of the effort that is being put into this over such sums seems, to me, quite problematic.

That said, I suppose I am inclined to the view that Brooklyn College actually possibly could do more to be sensitive to the concerns raised by the plaintiffs, whether they rise to Constitutional dimension or not. They might be well advised to consider that with some degree of seriousness and, indeed, maybe the parties would be well advised to see if they couldn't work something out. But, the fact that I might think different, policywise, doesn't make it Constitutional law. As Judge Sotomayor has been busily reminding everybody as long as everybody will listen, and probably more often.

So that is my ruling. I'll enter a written order. I may review the transcript, but I don't intend, at least at this point, to render a written opinion.

Thank you, folks.

(Adjourned)

APPENDIX F

United States Constitution, Amendment I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV provides:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the

members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

42 U.S.C. § 1983 provides:

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX G

Brooklyn College

Bulletin
Undergraduate Programs
2007-2010

* * *

Tuition and Fees 29

Undergraduate tuition for continuing matriculated students

New York State residents

Full-time	$2,000 per semester
Part-time	$170 per credit

Nonresidents and international students

Full-time	$360 per credit
Part-time	$360 per credit

Undergraduate tuition for nondegree students

Nondegree students pay tuition according to the following schedule:

New York State residents

$250 per credit (no limit)

Nonresidents and International students

$530 per credit (no limit)

Student classification

New York State residents

To be classified as a New York State resident, an applicant must have resided in the state of New York for the twelve-month period preceding the first day of classes of the term in which the student enrolls.

The applicant must state his or her intention to live permanently and maintain his or her principal place of residence in New York State.

Out-of-state residents

Students classified as out-of-state residents pay tuition as nonresident students. Newly admitted students may apply to have their status changed to New York State residents in the Admissions Information Center, 1103 James Hall. Continuing students may apply to have their status changed to New York State residents by filing a City University residence form in the Office of the Registrar, 1108 Boylan Hall. Students should contact the appropriate office listed above for further information. Applicants for residency who are under eighteen years of age must submit certified copies of a parent's or guardian's federal and city income tax forms. Students who were admitted to Brooklyn College with an immigration permanent resident card must submit the card at the time of filing the residence form.

Additional information and requirements are contained on the City University residence form.

An applicant for residency who does not provide the required information or documentation may be classified as an out-of-state resident.

Full-time students. Matriculated students who are enrolled for at least 12 credits or the equivalent each term are classified as full-time students.

Part-time students. Students who are enrolled for fewer than 12 credits or the equivalent each term are classified as part-time students. All courses taken by part-time students are billed on a per-credit basis except compensatory, developmental, and remedial courses, which are billed on a contact-hour basis. The Schedule of Classes published each term lists these courses. The tuition charged part-time students on a per-credit basis in anyone term may not exceed the term rate for full-time students.

Summer and January intersession tuition

Students enrolled in the summer session and January intersession pay tuition at the per-credit rate according to their classification.

Student Activity Fee

Students pay the Student Activity Fee for each term and summer session in which they enroll. It covers funding of student government student organizations and College newspapers; use of athletic equipment and campus facilities; admission to certain social and cultural events; and maintenance and amortization of the Student Center.

Day students	
Student Activity Fee:	$98.55
Student Center	$32.50
College associations	$62.20
NYPIRG (New York Public Interest Research Group)	$ 3
University Student Senate	$ 0.85
CUNY Consolidated Services Fee:	$15

Technology Fee: $75 per term, full-time students; $37.50 per term, part-time

students

Tuition and Fees 30

Evening and weekend students

Student Activity Fee:	$61.35
Student Center	$32.50
College associations	$26
NYPIRG (New York Public Interest Research Group)	$ 2
University Student Senate	$ 0.85
CUNY Consolidated Services Fee:	$15

Technology Fee: $75 per term, full-time students; $37.50 per term, part-time students

Summer sessions – all undergraduate students

Student Activity Fee:	$61.85
Student Government	$2.50
Student Center Board	$32.50
College Associations	$ 26
University Student Senate	$ 0.85
CUNY Consolidated Services Fee:	$15

Technology Fee: $75 per term, full-time students; $37.50 per term, part-time students

Special fees

Accelerated Study	$100 for 18.5 to 20 credits; $230 for 20.5 to 22 credits; $460 for 22.5 to 24 credits;

	$690 for 24.5 or more credits.
Application	$65 for first-year students $70 for transfer students
Application for readmission	$10
Duplicate diploma	$15
Duplicate record	$5 for each duplicate of any receipt or similar item.
Late payment	$ 15 for students who are delinquent in paying tuition and fees by the deadlines indicated in the *Schedule of Classes* and on the tuition bin.
Late registration	$25
Library fines	Students should consult the library for the policy on fines.
Material fees	Some courses entail a fee to cover the costs of special materials, film rental charges, transportation, field trip expenses, or other noninstructional costs. Material fees are subject to change and are nonrefundable. Details may be found in each term's *Schedule of Classes*.
Program Change	$18 for adding a course, changing from one course to another, or changing from one section to another if changes are made at one time.
Replacement of ID	$5

card	
Reprocessing	$15 for a check returned by bank as uncollectible.
Special Baccalaureate Program for Adults	$50 for evaluation of life experience.
Special examination	$25 plus $5 for each additional examination.
Speech and Hearing Center	$200 for speech-language diagnostic evaluation; $150 for audiological evaluations; $700 for fourteen forty-five-minute individual speech therapy sessions one time per week; $1,260 for fourteen individual speech therapy sessions two times per week; $120 per semester for aphasia group. Brooklyn College students, staff, and faculty with valid College ID receive a 40 percent discount
Transcript	$7, waived for transcripts sent to the admissions offices of other units of the City University.

Graduate Division tuition for undergraduate students

Brooklyn College undergraduate students who take graduate courses for graduate credit pay applicable resident or nonresident tuition rates set for graduate students and are subject to the maximum tuition rate set for undergraduate students. Graduate Division

tuition rates are fisted In the *Schedule of Classes* and the Graduate *Bulletin.*

Undergraduate students who take graduate courses for undergraduate credit pay applicable tuition rates set for undergraduate students.

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Tuition waiver for employees of the City University of New York

After six months of service, full-time employees of the City University of New York may be granted a waiver of tuition for undergraduate credit-bearing courses. Courses may not be taken during an employee's working hours. Employees must meet standards and requirements of the College and may be admitted as matriculants or nondegree students. Exemption from payment of tuition does not include exemption from payment of noninstructional fees. Information and applications may be obtained in the Personnel Office, 1219 Boylan Hall.

Auditing fee

The fee for auditing a day, evening, or weekend course is the same as if the course were being taken for credit. The fee for senior citizens (New York State residents age sixty and older) is $65 plus the $15 CUNY Consolidated Services Fee a term. Senior citizens who take courses for undergraduate credit must pay the applicable tuition and fee rates set for undergraduate students.

Payment of Tuition and Fees and Payment Plans

Registration Statements (Bills)

Each time that students register, a Registration Statement (or bill) is generated. The bill contains

their name, address, an extract of their Social Security number. And information about their student status (e.g. undergraduate or graduate, matriculated or nonmatriculated, residency status). It also lists all of the courses for which they are registered, the total amount of tuition and fees for the courses that they are taking, and the balance due. The Registration Statement lists any financial aid or grants that they have applied for and are eligible to receive and/or third-party payments. If the balance due on the bill is "0," no tuition is owed for the semester for which they are registering. If the balance due is not "0" and any expected financial aid or other tuition support is not on the Registration Statement, students should contact the Financial Aid Office immediately.

Students who register online may view and print their Registration Statement in WebSIMS, which provides the most current view of the amount owed for the semester's tuition. Students who register in person for a special program receive a Registration Statement mailed to their home address as listed in WebSIMS.

Refer to the *Schedule* of Gasses for the mailing schedule. Note that at some point prior to the start of each semester, Registration Statements are no longer mailed. Registration Statements may also be printed in WebSIMS.

Payment due dates

Each semester, payment due dates are published in the *Schedule* of *Classes*. This information is also available on the BC WebCentral Portal. If the account is not properly settled by the specified due date, students' registration will be canceled and they

will be barred from attending classes for the semester.

Payment options

Tuition may be paid online, by mail, in person, or under the terms and conditions of the CUNY TuitionPay Monthly Payment Plan.

Online. Bills may be paid online in WebSIMS with a Visa, Mastercard, Discover, or American Express credit card. Credit card options are updated frequently and the latest information about credit card payment may be found on the BC WebCentral Portal.

Mail. Bills that are received in the mail or printed from WebSIMS may be returned to the Office of the Bursar, Brooklyn College, 2900 Bedford Avenue, Brooklyn, NY 11210. Students may send any combination of credit card, check, and money order payments. All checks and money orders should be made payable to Brooklyn College. Do not mail cash.

In Person. Bills are payable in person at the Enrollment Services Center, 0100A Boylan Hall. The balance due may be paid in cash, or by credit card, check, or money order, or any combination thereof.

Tuition Monthly Payment Plan. Under the terms of a CUNY-wide program, Brooklyn College students may enroll in the approved budgeted tuition payment plan. To maximize the benefit of this plan, students should complete their enrollment and commence making payments two months before the start of the fall or spring semester. There is no payment plan for summer or intersession terms. The enrollment fee is $18. Interest is not charged, but late payment fees do apply. For more detailed information about this

plan, refer to the *Schedule* of *Classes* or visit the BC WebCentral Portal.

Brooklyn College does not accept telephone or faxed payments.

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Refund policy

The following refund schedule is subject to change by the Board of Trustees of The City University of New York. Tuition may be refunded as follows: 100 percent refund for withdrawal from courses before the official opening date of the fall or spring term; 75 percent refund for withdrawal within one week after the scheduled opening date of classes; 50 percent refund for withdrawal during the second week after the scheduled opening date of classes; 25 percent refund for withdrawal during the third week after the scheduled opening date of classes. No refund is given if a student withdraws later than the third week after the scheduled opening date of classes.

Tuition refunds are processed for summer sessions and the January intersession. A schedule for these refunds as established by the number of days attended is published in the *Schedule of Classes* for the summer or January intersession in question.

Further information about refunds may be obtained in the Refunds Office, 1147 Boylan Hall, or the Enrollment Services Center, 0100A Boylan Hall.

Unless a student's registration is canceled by the College, or he or she withdraws before the first scheduled day of classes, no portion of the Student Activity Fee or special fees is refunded. Refund of the NYPIRG contribution may be obtained during a two-week refund period set by the organization.

Students who enlist in the armed services, Peace Corps, or AmeriCorps and who have not attended classes long enough to quality for a grade but continue in attendance to within two weeks of induction receive a refund of tuition and all fees, except application fees as follows: 100 percent refund for withdrawal before the beginning of the fifth calendar week (third calendar week for summer session) after the scheduled opening date of the term; 50 percent refund for withdrawal thereafter.

Service must be documented with a copy of induction or service orders. No refund is made to a student who has been assigned a grade, whether the grade is passing or falling. To obtain a grade, a student must have been enrolled for approximately thirteen weeks or for five weeks in summer session.

Financing Your Education

The Financial Aid Office administers a large number of College, CUNY, federal and state aid programs to assist students who need help in meeting College expenses. This aid includes scholarships, grants, loans, and work-study. Students are encouraged to explore these options by contacting the Office of Financial Aid, (718) 951-5051. Financial aid representatives are available to advise and assist with applications. Additionally, students are urged to review the office's Web page at http://finaid.brooklyn.cuny.edu.

Renewal of a student's award from federal and state sources is contingent on continued support from government agencies and on the annual determination of the student's eligibility. Federal and state programs change frequently, so specific types of awards may not be available each year.

Award amounts may vary year to year, based on available funds and changes in a student's financial need status.

Circumstances may require that the Financial Aid Office contact you immediately. Students must keep their telephone number, mailing address, and e-mail address current. E-mail is the primary means of communication from the Financial Aid Office to students. Students may update their e-mail addresses on the BC WebCentral Portal, https://portal.brooklyn.edu.

Financial aid programs

The following financial aid programs are available to eligible matriculated undergraduate students at Brooklyn College. Descriptions of the programs are subject to periodic evaluation and change but are available on the financial aid section of the Web site and in the Office of Financial Aid. To apply for financial assistance, students must first file a Free Application for Federal Student Aid (FAFSA) and any subsequent state applications. The FAFSA and all other necessary forms are located on our Web site, http//finaid.brooklyn.cuny.edu.

* * *

Phi Beta Kappa

The Brooklyn College Chapter of Phi Beta Kappa, Rho of New York, is a constituent member of the Phi Beta Kappa society, whose purpose is to recognize and encourage scholarship and cultural interests. Members are elected primarily on the basis of broad cultural interest, scholarly achievement, and good character. Only those students whose work has been

definitely liberal in character and purpose are considered for election as members. Grades earned in applied or professional courses are not considered in determining eligibility for election to membership.

Weight is given to the breadth of the course program as well as to grades earned. Weight is also given to college-level foreign language study beyond the core requirement. Candidates are expected to show evidence of elective study beyond the core requirements and outside their major in at least two of the three broad areas of the humanities, the social sciences, and the sciences.

All eligible students are considered by the Committee on Admissions; candidates do not apply to Phi Beta Kappa

National honor societies

National honor societies with chapters on the Brooklyn College campus are Upsilon Pi Epsilon (computer science), Kappa Delta Pi (education), Pi Delta Phi (French), Pi Mu Epsilon (mathematics), Psi Chi (psychology), Alpha Kappa Delta (sociology), Sigma Delta Pi (Spanish), Sigma Alpha Eta (speech), and Golden Key International Honour Society (all disciplines).

Student service and volunteer opportunities

The Students Engaged in Responsible Volunteer Action (SERVA) program. Brooklyn College's volunteer registry provides recognition for students who serve in the community and the College through such programs as Student Activity Volunteer Intern (SAVI). Seeds of Hope, Presidential Ambassadors, Community Building, Student Communications Committee, and the Annual Brooklyn College

Volunteers Week. Students may volunteer for the Disaster Relief Efforts Committee, AIDS and Diabetes Awareness Campaigns, and annual blood drives and Counting the Homeless Projects. For more information, contact the Office of the Dean of Student Affairs, 2113 Boylan Hall, (718) 951-5352, studentaffairs@brooklyn.cuny.edu.

New York Public Interest Research Group, Inc. (NYPIRG)

The New York Public Interest Research Group, Inc. (NYPIRG) is a nonprofit, nonpartisan research and advocacy organization established, directed, and supported by New York State college students. NYPIRG provides the structure through which concerned students may work for social change in such areas as consumer protection, environmental quality, fiscal responsibility, political reform, equal opportunity, and social justice while gaining experience in areas of research, government, and citizenship.

Academic credit may be received for NYPIRG internship work through urban fieldwork courses (Political Science 75.5 and 75.6) or through internships arranged with the permission of individual course instructors.

With chapters on nineteen campuses throughout the state, NYPIRG is directed and funded by students through their Student Activity Fee. There is a two-week refund period each term for students who do not want to contribute to the organization; refunds may be requested in Central Depository, 314 Student Center, or in the NYPIRG office, 0302 James Hall, (718) 859-7177.

Recreational activities

Recreational activities are open and unstructured, and facilities are available on an individual basis. Schedules for activities are available at the beginning of each semester. The recreational facilities include a fitness center, basketball courts, and tennis courts. Basketballs are available in the Recreation Center, but students must bring their own tennis racquets. To use the facilities, students must present a valid Brooklyn College identification card in the Recreation Center, 125 Roosevelt Hall, (718) 951-5366.

Intercollegiate athletics

The intercollegiate sports program offers a schedule of athletics competition in Division III of the National Collegiate Athletic Association (NCAA). All students are encouraged to take part in the program, which includes men's soccer, women's softball, and men's and women's basketball, cross-country, tennis, and volleyball. Students who are interested in joining a team should visit the Recreation Center, 125 Roosevelt Hall, (718) 951-5366.

APPENDIX H

Minutes of Proceedings, June 25, 2007

MINUTES OF THE MEETING OF THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

HELD

JUNE 25, 2007

AT BARUCH COLLEGE VERTICAL CAMPUS

55 LEXINGTON AVENUE—BOROUGH OF MANHATTAN

The Chairperson called the meeting to order at 4:35 P.M.

There were present:

Benno C. Schmidt, Jr., Chairman
Philip Alfonso Berry, Vice Chairman

Valerie Lancaster Beal	Carol A. Robles-Roman
Wellington Z. Chen	Marc V. Shaw
Rita DiMartino	Sam A. Sutton
Hugo M. Morales	Freida Foster-Tolbert
Kathleen M. Pesile	Jeffrey S. Wiesenfeld

Robert Ramos, ex officio

Manfred Philipp, ex officio (non-voting)

Frederick P. Schaffer. General Counsel and Senior Vice Chancellor for Legal Affairs

Jay Hershenson, Secretary and Senior Vice Chancellor for University Relations

Horig Messerlian, Deputy to the Secretary

Kisha Fuentes

Towanda Lewis

Anthony Vargas

Chancellor Matthew Goldstein

Executive Vice Chancellor Selma Botman

Executive Vice Chancellor Allan H. Dobrin

President Dolores Fernandez

President Ricardo Fernandez

President Russell K. Hotzler

President Edison O. Jackson

President Marcia V. Keizs

President William P. Kelly

President Christoph M. Kimmich

President Eduardo J. Marti

President Gail O. Mellow

President James L.

President Marlene Springer

President Jeremy Travis

President Kathleen M. Waldron

President Carolyn G. Williams

Dean Michelle Anderson

Dean Ann Kirschner

Dean Stanford A. Roman, Jr.

Dean Stephen Shepard

Vice Chancellor Ernesto Malave

Vice Chancellor Brenda Richardson Malone

Vice Chancellor Garrie Moore

Vice Chancellor Michael Zavelle

Vice Chancellor Iris

Muyskens Weinshall

President Antonio Perez Senior University Dean John Mogulescu

President Jennifer Raab RF President Richard F. Rothbard

The absence of Trustees John S. Bonnici, Joseph J. Lhota, and Randy M. Mastro was excused.

* * *

(1) UNDERGRADUATE DAY SESSION STUDENTS

EARMARKED ALLOCATING BODY	FULL-TIME	PART-TIME	SUMMER I	SUMMER II
Student Government	$6.00	$3.00	$1.34	$2.83
College Association	11.00	5.50	2.41	5.17
Student Services Corp.	56.00	40.00	20.00	30.00
Sports Allocation Board	23.00	15.00	15.00	15.00
Comm. for Disabled Students	2.70	2.70	2.70	2.70
Child Development Center Board	2.70	2.70	2.70	2.70
NYPIRG	6.00	6.00	4.00	4.00
USS	0.85	0.85	0.85	0.85
Total Student Activity Fee	**$108.25**	**$75.75**	**$49.00**	**$63.25**

(2) UNDERGRADUATE EVENING SESSION STUDENTS

EARMARKED ALLOCATING BODY	FULL-TIME	PART-TIME	SUMMER I	SUMMER II
Student Government	$6.00	$3.00	$1.34	$2.83
College Association	11.00	5.50	2.41	5.17
Student Services Corp.	56.00	40.00	20.00	30.00
Sports Allocation Board	18.00	13.00	15.00	15.00
Comm. for Disabled Students	2.70	2.70	2.70	2.70
Child Development Center Board	2.70	2.70	2.70	2.70
NYPIRG	6.00	6.00	4.00	4.00
USS	0.85	0.85	0.85	0.85
Total Student Activity Fee	$103.25	$73.75	$49.00	$63.25

(3) GRADUATE STUDENTS

EARMARKED ALLOCATING BODY	FULL-TIME & PART-TIME	SUMMER I	SUMMER II
Student Government	$3.00	$1.34	$2.74

College Association	4.75	2.41	5.01
Student Services Corp.	40.00	20.00	30.00
Sports Allocation Board	8.00	8.00	8.00
Comm. for Disabled Students	2.70	2.70	2.70
Child Care	1.95	1.95	1.95
NYPIRG	4.00	4.00	4.00
USS	0.85	0.85	0.85
Total Student Activity Fee	**$65.25**	**$41.25**	**$55.25**

EXPLANATION: The above schedules represent increases to Student Government ($0.95 f.t., $0.29 p.t., $0.55 graduate, and $0.29 summer sessions); to the College Association ($1.58 f.t., $0.46 p.t., $0.20 graduate and $0.46 summer sessions); for the Sports Allocation Board ($5.00 for all students); for the Committee for Disabled Students ($0.70 for all students) for Child Care ($0.70 for all students) and for NYPIRG ($1.00 for all students).

A referendum was held in accordance with University Bylaw Section 16.12, in conjunction with student government elections held April 16-19, 2007. The vote on the referendum was 358 in favor and 232 opposed, with 3.3% of the eligible students voting.

The increase in the athletics fee will support a new fitness center, an indoor tennis center and extended hours in the facilities. The child care center has expanded to nights and weekends and offers

services to more children. The Committee for Disabled Students services more students and is adding a tutorial program among other enhancements. The College Association, Student Government and NYPIRG seek inflationary increases and seek to expand services offered.

The governing boards of the allocation bodies for the Queens College student activity fees other than the student governments and the College Association have the following voting compositions (1) Student Services Corporation (student union board) -- 11 faculty/administrators, 7 students and 1 alumni; (2) Sports Allocation Board — 4 faculty/administrators, 6 students, and 1 alumni; (3) Committee for Disabled Students — 5 students, 1 member-at-large and the Dean of Students; and (4) Child Development Center Board — 6 faculty/administrators and 3 students.

The earmarkings to the allocating bodies as set forth in the resolution may only be changed by further Board action.

The student activity fees allocated by the Sports Allocation Board, the Child Care Board, and NYPIRG are refundable, in accordance with procedures subject to the approval of the College President.

B. BROOKLYN COLLEGE — STUDENT ACTIVITY FEE INCREASE, COLLEGE OF LIBERAL ARTS AND SCIENCES (DAY SESSION):

RESOLVED, That the student activity fees paid by Undergraduate College of Liberal Arts and Sciences (CLAS) students at Brooklyn College be increased by $2.00 for the Fall and Spring semesters and by $5.00 for Summer Session I and Summer Session II effective the Fall 2007 semester, in

accordance with the following student activity fee schedules:

STUDENT ACTIVITY SCHEDULES

(1) College of Liberal Arts and Sciences (Day Session):

EARMARKED ALLOCATING BODY	**CURRENT FEE**	**PROPOSED FEE**
Student Government	$08.50	$08.50
Student Services Corp.	32.50	32.50
College Association	49.70	49.70
College Assn./Student Govt.	04.00	04.00
NYPIRG	03.00	05.00
University Student Senate	00.85	00.85
Total Student Activity Fee	**$98.55**	**$100.55**

Within the $8.50 Student Government fee. The following local earmarkings exist: $0.20 for the Riverrun Journal, $0.50 for the Broeklundian Yearbook, $0.50 for the Student Film Society, $0.25 for Hatikvah, and $0.25 for On Campus, with the remaining $6.80 going to Student Government, clubs, and other activities. Within the $49.70 College Association fee, the following local earmarkings will exist: $18.60 for Athletics and Recreation, $5.00 for the Career Service Center, $2.00 for the Emergency Medical Service, $1.00 for Student Concerts, $1.00 for the Radio Station, $3.50 for the Academic Club Association, $0.20 for the Drop-in Center, $1.00 for SOFEDUP (disabled students), $2.40 for the Student Forensics Society, $10.00 for the Health Care Clinic,

and $5.00 for Child Care. Four dollars ($4.00) of the student activity fee is jointly allocated by the College Association and the Student Government, with $2.50 locally earmarked for student newspapers and $1.50 to the Lay Advocate Program. Both the Student Government and the College Association must approve the budgets for the student newspapers and the Lay Advocate Program.

(2) College of Liberal Arts and Sciences (Day Session) Summer Sessions:

EARMARKED ALLOCATING BODY	CURRENT FEE	PROPOSED FEE
Student Government	$02.50	$02.50
Student Services Corp.	32.50	32.50
College Association	26.00	26.00
NYPIRG	00.00	05.00
University Student Senate	00.85	00.85
Total Student Activity Fee	**$61.85**	**$66.85**

Within the $26.00 Undergraduate Summer Session College Association fee, the following local earmarkings will exist: $10.00 for Athletics, $1.00 for the Emergency Medical Service, $10.00 for the Health Care Clinic, and $5.00 for Child Care.

EXPLANATION: The student activity fee schedules represent an increase of $2.00 for CLAS during the Fall and Spring semesters and the establishment of a $5.00 fee for CLAS students for Summer I and Summer II sessions, which will be earmarked by the New York State Public Interest Research Group, Inc. (NYPIRG). SGS (Evening

Students) will continue to pay the $61.85 Undergraduate Summer Session Fee.

Two referenda were held in conjunction with student government elections held April 23-24, 2007. The vote on the referendum to increase the NYPIRG earmarking for the Fall and Spring semesters from $3.00 and $5.00 was 925 in favor and 320 opposed, with 13% of the eligible students voting. The vote on the referendum to establish a $5.00 NYPIRG fee for Summer I and Summer II was 839 in favor, 406 opposed, with 13% of the eligible students voting. The College President supports the increase.

The earmarkings to the allocating bodies as set forth in the schedules have been approved by the Board and may only be changed by further Board action. Local earmarkings at the College are also set forth above for each of the student activity fee schedules. The local earmarkings have been established and are subject to change at the College in accordance with the referendum process set forth in Board Bylaw Section 16.12, provided there is no change in the total fee. The earmarkings set forth in the resolution may only be changed by further Board action. The student activity fees allocated by NYPIRG are refundable, in accordance with procedures subject to the approval of the College President.

The governing board of the Student Services Corporation, which allocates the earmarked fee for the Student Center, has the following composition: 7 Administrators and 6 Students, with the College President as Chair.

C. THE CITY UNIVERSITY OF NEW YORK — MEDICAL WITHDRAWAL POLICY:

RESOLVED. That The City University of New York medical withdrawal and re-entry policy and procedures governing student behavior that presents a direct threat of hard to self or others or substantially disrupts the learning or working environment of others adopted, effective July 1, 2007.

NOTE: See Appendix F

EXPLANATION: The City University of New York ("CUNY") is committed to the academic success and personal growth of its students. As part of that commitment, CUNY and its constituent campuses are responsible for providing a safe learning and working environment for students, faculty, staff and other members of the University community. Some students may, because of a medical condition, engage in behavior that presents a direct threat of harm to themselves or to others, or substantially disrupts the learning or working environments of others. In such situations, the safety and security of the campus community, including the individual student, is paramount.

In addition to taking action to protect the security and safety of the campus community, a college may address the student's conduct to determine if action is appropriate. In the past, such conduct has been addressed primarily under the student disciplinary procedure contained in Article 15 of the CUNY Bylaws. Depending on the circumstances, it may be more appropriate to address student conduct that is connected to a mental health or other medical condition under this medical withdrawal policy and procedure. Specifically, when a student's conduct that directly threatens or substantially disrupts the learning or working

environment of others appears to relate to a medical condition, adoption of this policy and procedure would afford campuses the flexibility to address that conduct either in accordance with this policy and procedure, or through the Article 15 student disciplinary procedure. In the event that a student's conduct constitutes a threat solely to him or herself, adoption of this policy and procedure would allow that conduct to be addressed under this medical withdrawal policy and procedure rather than Article 15.

Report of Student Affairs and Special Programs Committee Chair Kathleen M. Pesile:

As you know, **Vice Chancellor Garrie Moore** came **CUNY** a little more than a year ago, When he came, he had a vision of creating a world class leadership development program where students could acquire skills that would allow them to be effective and engaged global citizens of change.

This past semester **Vice Chancellor Moore** and I, along with the **University Student Senate**, hosted a series of student leadership forums in four boroughs. Student leaders from all **CUNY** colleges were invited to participate in these programs and one of the main purposes was to hear from student leaders and get a sense of what was on their minds. Over and over again, these students expressed a need and desire to build their leadership skills and each time we mentioned the **CUNY** Leadership Academy, students' reactions were "when can I sign up?"

The purpose of the **CUNY** Leadership Academy is to build on existing out of classroom service learning opportunities, create new, targeted, out of classroom experiences that are coordinated with existing

University-wide academic leadership courses/programs and expand co-curricular experiences that will prepare students to be effective global citizens who are engaged in transforming their communities through scholarship, work and service. Please note that we are not creating a new academic program!

The design of the leadership academy considers the diverse needs of **CUNY** students and therefore seeks to provide a multiple access points for students to gain experience from the many opportunities of the academy. Students may have a formal relationship with the Academy by enrolling in the "Leadership Certificate Experience" or simply participate in a selected number of initiatives. In an additional effort to promote and document student participation, we are implementing a new **CUNY** Co-Curricular Transcript (an initiative that already exists at **Kingsborough Community College**) that will function as a significant element of the Academy.

The vision is for this **CUNY** Leadership Academy to be viewed as one of the premier student leadership development entities in the country. It is our plan to formally kick off the **CUNY** Leadership Academy at the USS Fall Retreat. **Vice Chancellor Moore's** vision is one that I fully support and together we will insure that our students have a wonderful opportunity to excel.

NO. 8. **HONORARY DEGREES:** RESOLVED, That the following honorary degrees, approved by the appropriate faculty body, the college president and recommended by the Chancellor, be presented at the commencement exercise as specified:

COLLEGE **DEGREE**

GRADUATE SCHOOL AND UNIVERSITY CENTER

Agnes Gund	Doctor of Humane Letters
Jean Kennedy Smith	Doctor of Humane Letters

(Awarded at the May 24, 2007 Commencement Exercises following consultation with the Board of Trustees)

NO. 9. (TABLE ITEM) AMENDMENTS TO THE BYLAWS OF THE BOARD OF TRUSTEES

RESOLVED, That Article III — COMMITTEES OF THE BOARD of the Bylaws be amended by adding new Section 3.2, as follows:

Section 3.2 EXECUTIVE COMMITTEE

a. The Executive Committee of the Board shall consist of the Chair of the Board, the Vice Chair of the Board, the Chair of the Committee on Academic Policy, Program, and Research, the Chair of the Committee on Faculty, Staff and Administration, the Chair of the Committee on Fiscal Affairs, the Chair of the Committee on Facilities Planning, and Management and the Chair of the Committee on Student Affairs and Special Programs.

b. The Executive Committee shall meet at such times that the Chairperson of the Board convenes it, upon the request of the Chancellor or his/her designee. The Executive Committee may take any actions that could have been taken by the Board of Trustees, with the exception of amending these Bylaws, upon the determination by at least four members that it would be detrimental to the University to delay the

advancement of the matter until the next regularly scheduled meeting of the Board of Trustees.

c. Certification of such determination and all actions of the Executive Committee shall be reported to all members of the Board no later than the next scheduled meeting. Notice of such actions shall also be placed on the agenda of the next scheduled meeting of the Board of Trustees.

Be it further

RESOLVED, That the Board waives the Bylaw provision requiring that a Bylaw change be adopted at the regular or special meeting following the meeting that it was introduced.

EXPLANATION: This resolution amends and supersedes the Resolution adopted by the Board of Trustees on June 25, 1984. Pursuant to that resolution, the Board of Trustees delegated to any four Trustees, one of whom must be the Chairperson or Vice Chairperson of the Board, its authority to approve, upon the recommendation from the Chancellor, certain agreements relating to facility planning and management, upon a determination by said four Trustees that it would be detrimental to the University to delay the advancement of a matter until the next regularly scheduled meeting of the Board of Trustees. This resolution places that authority with the newly constituted Executive Committee, consisting of the Chairperson and Vice Chairperson of the Board plus the Chairpersons of the standing committees. It also expands the delegation of authority beyond matters relating to facilities to include all the powers of the Board of

Trustees, except for the amendment of the Board Bylaws, and complies with the Open Meetings Law. For example, the Executive Committee would be authorized to appoint an interim President of on of the College if a vacancy arose over the summer.

Statement of USS Chairperson and Trustee Robert Ramos:

The only issue I kind of have with this is it does not include myself or the next USS chair and I kind of see that as a problem in that if actions could be taken during the summer by this committee and there is no student input and there is no involvement form the University Student Senate getting anything, whatever is brought up, we will not be aware of it because we are not involved. While it might be given to us maybe to look over during the summer, I officially or my successor officially will not have a vote or say in it. It kind of takes away the student voice.

Statement of Chairman Benno C. Schmidt, Jr.:

How about if we undertake that we will as a matter of routine always consult with the student, past or future student trustee representative whenever the Executive Committee is asked to do anything, so that we will have that input.

Statement of General Counsel and Senior Vice Chancellor Frederick P. Schaffer:

Mr. Chairman, if I might just add, this comes up very rarely. In the past we had a standing resolution where we formed an ad hoc committee of four trustees, usually when a lease needs to be signed or a contract has to be signed before the next Board

Meeting. This is a continuation but also an expansion of that power. That has generally not

* * *

APPENDIX I

THE CITY UNIVERSITY FISCAL HANDBOOK FOR THE CONTROL AND ACCOUNTABILITY OF STUDENT ACTIVITY FEES 1992

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* * *

budget rather than the discrete portion of the budget. The Board of Trustees Bylaws and this Handbook supersede the June 1970 Fiscal Administration Guidelines, as they apply to student activity fees.

The Handbook outlines the minimum requirements that each fiscal document (forms, books of account, etc.) shall include. Sample fiscal documents have been included as exhibits to this Handbook. These sample fiscal documents contain

and illustrate the minimum required data. Documents currently in use need not be discarded if they include the minimum required data. A college form can be used by the college association if it includes the minimum required data. College regulations may be more stringent than those outlined in the Handbook. Students must abide by the more stringent college regulations where applicable.

Students who do not comply with the University regulations contained in the Handbook or College regulations on student activity fees, are subject to the Student Disciplinary Procedures contained in Article XV of the Bylaws of the Board of Trustees. Students who fail to properly account for student activity fee funds may be determined to be delinquent or in default on a University or college financial account and may be barred from registration and from receiving a transcript or degree until a proper accounting or restitution is made (See Section VI.O. for the Board of Trustees policy statement on delinquent student financial accounts).

Student activity funds can be expended for or on behalf of CUNY faculty, administrators and staff who are participants, speakers or college designated advisors at the activities involved.

Where the Board of Trustees has entered into a contractual agreement with a corporation, for the administration of student activity fees, such a contractual agreement supersedes those Board of Trustees Bylaws and policies indicated in the contracts as they relate to the administration of student activity fees. There are currently two corporations which are administering student

activity fees pursuant to contractual agreements with The City University of New York (CUNY): (1) the Student Union fee administered by the Brooklyn College Student Services Corporation and (2) the Student Union fee administered by the Queens College Student Services Corporation. The Queens College Student Activities Corporation's contract was terminated by the Board effective June 30, 1992 (See Exhibit U, item D).

* * *

"However, no group, organization or student publication with a program against the religion, race, ethnic origin or identification or sex of a particular group or which makes systematic attacks against the religion, race, ethnic origin or sex of a particular group shall receive support from any fees collected by the college or be permitted or organize or continue at any college or school. No organizations, military or semi-military in character, not connected with established college or school courses, shall be permitted without the authorization of the faculty and the duly elected student government and the Board."

Regular membership in an organization, association, club or chapter is limited to currently enrolled students and is governed by Bylaws Section 15.2 on Student Organizations.

C. Requirements for a College Association to be Approved by the Board of Trustees

Section 16.5(b) of Article XVI of the Board Bylaw amendment of March 23, 1992 outlines these requirements. Section 16.5(b) applies only to college associations, not to related entities that are not college associations. It does not apply to Child Care

Centers, Athletic Boards, Committees to Assist Disabled Students, Student Governments, or other allocating bodies that are not college associations. All college associations' bylaw waivers for variations in their structures were repealed on March 23, 1992 by the Board (See Exhibit U, item C). Section 16.5(b) is quoted here for ready reference.

"b. A college association shall be considered approved for purpose of this article if it consists of thirteen (13) members, its governing documents are approved by the college president and the following requirements are met:

1. The governing board of the college association is composed of:

   (i) The college president or his/her designee as chair.

   (ii) Three administrative members appointed by the college president.

   (iii) Three faculty members appointed by the college president from a panel whose size is twice the number of seats to be filled and the panel is elected by the appropriate college faculty governance body.

   (iv) Six student members comprised of the student government president(s) and other elected students with the student seats allocated on a basis which will provide representation to each government, where more than one exists, as nearly as practicable in proportion to the student activity fees

provided by the students from the respective constituencies.

2. The college association structure provides a budget committee composed of members of the governing board at least a majority of whom are students selected in accordance with section 16.5(b) (1)(iv) of these bylaws. The budget committee shall be empowered to receive and review student activity fee budget requests and to develop a budget subject to the review of the college association. The college association may choose to not approve the budget or portions of the budget if in their opinion such items are inappropriate, improper or inequitable. The budget shall be returned to the budget committee with the specific concerns of the college association noted for further deliberation by the budget committee and subsequent resubmission to the college association. If the budget is not approved within thirty (30) days those portions of the budget voted upon and approved by the college association board will be allocated. The remainder shall be held until the college association and the budget committee agree.
3. The governing documents of the college association have been reviewed by the board's general counsel and approved by the board."

The above quoted section does not apply to the earmarked portion(s) of the student activity fees.

D. Student Organization Governing Documents and Adherence Thereto

The rules outlined here apply to governing documents of both college associations and student

governments. The governing documents vary with the organization, usually being either bylaws or constitutions.

1. They should have no provisions that conflict with the March 23, 1992 Board Bylaw amendments.
2. They should have provisions about the required number of members and officers, frequency of meetings, names of committees and their responsibilities, and quorum requirements to conduct business.

These provisions must be adhered to by the membership. If experience has indicated the impracticality of any of the provisions, changes to the governing documents should be considered.

E. Student Referenda, Minutes of Meetings, and Records Retention

1. Student Referenda

Where a portion of the student activity fee bas been earmarked by a student referendum, such earmarking remains in effect for future fiscal periods until superseded by a later student referendum. However, for a college student activity fee supported budget to be complete, a statement of the earmarking by a student referendum must be included in that budget each fiscal year.

* * *

EXHIBIT AA

NEW YORK PUBLIC INTEREST RESEARCH GROUP

Academic Year 1994-95: Sample

Hunter College Campus Activities

REVENUE	TOTAL: $81,849.00
Amount	Explanation
$81, 849.00	Student Activity Fee Income

EXPENSES	TOTAL: $99,183.25
Amount	Explanation
$ 56,482.40	Project Coordination & Operating Expenses Two full-time on-campus Hunter College Project Coordinators, Hunter College Program Supervisor, Supplies, Insurance, Travel, Copying, Postage, Printing, Telephone.
$ 11,186.99	Hunter College Participation in Environmental Projects Hunter College students worked with NYPIRG environmental staff on a statewide campaign to reduce the amount of garbage that contributes to the state's solid waste crisis. Students also worked with NYPIRG environmental staff and East

	Harlem community leaders to build a coalition against environmental racism, made community presentations and held workshops and a forum on environmental justice issues.
$ 4,4523.23	Hunter College Participation in Small Claims Court Action Center A NYPIRG staff attorney trains Hunter College Students to give free counseling to consumers who have questions about Small Claims Court procedure. These students give non-legal advice on a variety of matters, including how to prepare for a case and how to collect a judgment. Students sent out news releases and public service announcements to campus and community media outlets, staffed phones to answer consumer questions and made campus and community presentations. Students also organized a moot Court event.
$ 4,681.11	Hunter College Participation in Higher Education Projects Hunter College students, under the guidance of NYPIRG's Higher Education Coordinator, wrote letters, organized on-campus and statewide rallies

and participated in city and statewide efforts to prevent further tuition hikes, financial aid reductions, and CUNY budget cuts.

$ 3,663.04 Hunter College Participation in Voter Registration Projects

Hunter College students worked to register hundreds of students before the deadline for voting in the November elections. Students also participated in the making of a Citizenship Video at the CUNY Graduate Center and organized a Voter Registration, Education and Citizenship Forum on campus.

$ 2,496.80 Hunter College Participation in Local Projects

The Hunter College chapter worked with NYPIRG's Education Watch Campaign Coordinator to organize a conference on the Hunter College campus of students, educators and community residents on bias in standardized tests. Hunter College students also surveyed local car rental companies as part of a statewide report which documents illegal age discrimination and other anti-

	consumer practices in the car rental industry.
$ 4,258.75	Hunter College Participation in Lead Poisoning Prevention and Health Projects Hunter College students worked with NYPIRG's lead poisoning prevention staff on a statewide campaign to require that only qualified, certified workers remove most lead hazards. Students also organized a Lead Poisoning Prevention Forum On campus and participated in a campaign to reduce cigarette advertising.
$ 4,446.61	Hunter College Participation in Mass Transit Projects Hunter College students worked with NYPIRG's Straphangers Campaign staff on campaigns to improve New York City's public transportation system, create discount transit passes for students and eliminate two-and three-fare zones.
$2,526.06	Hunter College Participation in Statewide Student Conferences Statewide student conferences held each semester featuring over 40 educational workshops;

speakers and open to all Hunter College students.

$ 4,989.26 — Hunter College Student Board of Directors

NYPIRG is directed by a board consisting of approximately 30 students in any given year, including three representatives from the Hunter College chapter. Nine board meetings, periodic executive committee meetings, and annual board trainings are among the directors' activities.

NEW YORK PUBLIC INTEREST RESEARCH GROUP, INC.
ALL CAMPUS ACTIVITIES
ACADEMIC YEAR 1994-95: SAMPLE
ALLOCATED EXPENSES

Exhibit AA
Page 3 of 8

PROJECT	# CMP	ALLOCATABLE EXPENSES	CAMPUS % ALLOCATION	CAMPUS $ ALLOCATION
STUDENT BOARD	19	62,856.75	100.00%	62,856.75
ENVIRONMENTAL	19	148,356.12	95.00%	140,938.31
SMALL CLAIMS	16	51,514.06	95.00%	48,938.36
HIGHER EDUCATION	19	58,974.49	100.00%	58,974.49
VOTER REGISTRATIO	19	48,577.33	95.00%	46,148.46

N				
LOCAL GOVERNMENT	19	33,111.22	95.00%	31,455.65
INTERNSHIP PROGRAM	5	56,761.97	85.00%	48,247.67
LEAD & HEALTH	18	55,604.67	95.00%	52,824.44
MASS TRANSIT	6	23,747.71	95.00%	22,560.32
TOTALS		539,504.30		512,944.45

APPENDIX J

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Olivia Almengor, Marissa Schain, Daniel Bogatin, *Plaintiffs,* - against- Benno C. Schmidt, *in his capacity as Chairman of the Board of Trustees of the City University of New York*, Philip Alfonso Berry, Valerie Beal, Rita Dimartino, Freida D. Foster-Tolbert, Joseph J. Lhota, Hugo M. Morales, Peter S. Pantaleo, Kathleen M. Pesile, Carol A. Robles Roman, Marc V. Shaw, Charles A. Shorter, Sam A. Sutton, Jeffrey S. Wiesenfeld, Robert Ramos, Manfred Philipp, *in their capacities as trustees of the City University of New York*, and Christoph M. Kimmich, *in his capacity as the President of Brooklyn College*, *Defendants.*	08 CIV 6585 Civ. No. Hon. **Complaint for Declaratory and Injunctive Relief**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

* * *

79. In the Spring of 1998, the Central Depository of Brooklyn College froze the budgets of Students for Advocacy Group Accountability ("SAGA"), an RSO opposed to the funding of NYPIRG, for failure to submit an updated list of members and officers to the Brooklyn College Administration.

80. As a result, SAGA was unable to obtain club funds for duplication of "anti-NYPIRG" leaflets during the ten-day period designated by the college to petition for referenda. (Affidavit of Jennifer Zinamon, dated January 21, 2000.)

81. In November of 2007, the budgets of all RSOs, except for NYPIRG, were discontinued because Student Government failed to meet with a quorum. (Asya Farr, *Brooklyn College Excelsior*, "SG and B.C. Admin. Dispute Leaves Clubs in Limbo," Nov. 5, 2007.)

82. Similarly, the year before, the College Association failed to meet with a quorum as a result of which RSO funding was "postponed" and RSOs could not receive funding as predicted. ("BCA Postponed," *Brooklyn College Excelsior*, September 25, 2006.) The College Association's failure, however, did not affect NYPIRG's "extramural" funding.

83. Initial funding through non-referenda is generally limited to a few hundred dollars for the first year with moderate increases each subsequent year if the RSO meets Defendants' fiscal requirements.

84. NYPIRG—which obtains more than $100,000 annually from Brooklyn College student

fees alone compared to a few hundred or thousand dollars that other student groups receive—is not subject to the same consequences for non-compliance with College rules, nor can NYPIRG's funding be "FROZEN" or otherwise affected adversely by Student Government's failure to achieve a quorum or by the inaction of the College Association.

APPENDIX K

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Olivia Almengor, Marissa Schain, and Daniel Bogatin, *Plaintiffs,* - against- Benno C. Schmidt, *in his capacity as Chairman of the Board of Trustees of the City University of New York*, Philip Alfonso Berry, Valerie Beal, Rita Dimartino, Freida D. Foster-Tolbert, Joseph J. Lhota, Hugo M. Morales, Peter S. Pantaleo, Kathleen M. Pesile, Carol A. Robles Roman, Marc V. Shaw, Charles A. Shorter, Sam A. Sutton, Jeffrey S. Wiesenfeld, Robert Ramos, Manfred Philipp, *in their capacities as trustees of the City University of New York*, and Christoph M. Kimmich, *in his capacity as the President of Brooklyn College*, *Defendants.*	Civ. No. 08-cv-6585-LAK Hon. Lewis A. Kaplan, D.J. Hon. James C. Francis, M.J. **Notice of Motion for Summary Judgment**

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the annexed Statement of Material Facts pursuant to Rule 56.1 of the Local Civil Rules of the United States District Court for the Southern and Eastern Districts of New York; the declaration of Phineas E. Leahey, dated November 7, 2008 and the exhibits thereto; all pleadings and discovery responses on file while the motion remains under consideration; and on such other matters as may be presented by either party at or before a hearing scheduled by the Court; and for the reasons set forth in the Memorandum of Law in Support of Plaintiffs Olivia Almengor, Marissa Schain, and Daniel Bogatin, by the undersigned counsel, shall move this Court, before the Honorable Lewis A. Kaplan, District Court Judge, at the United States Courthouse, 500 Pearl Street, New York, New York, for the entry of an order granting summary judgment to Plaintiffs.

Dated: November 7, 2008

Respectfully submitted,
JONES DAY

/s/ Phineas E. Leahey

Todd R. Geremia
Of Counsel

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APPENDIX L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, et al., Plaintiffs, -against- BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al., Defendants.	**DEFENDANT PRESIDENT KIMMICH'S RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSION** 08 Civ.6585 (LAK)(JCF)

* * *

Kimmich does not and would not know the answer to this interrogatory.

Interrogatory No. 10

IDENTIFY the amount of money from Brooklyn College student activity fees that NYPIRG, Inc. forwards to USPIRG or any other PIRG entity as dues, subscriptions or other fees, gifts, or transfers of any kind.

Response To Interrogatory No. 10

President Kimmich objects to this interrogatory as overly broad in time, seeking information that is neither relevant nor likely to lead to the discovery of

admissible evidence, and beyond the scope of Local Civil Rule 33.3. Without waiving the foregoing objections, President Kimmich does not and would not know the answer to this interrogatory.

Interrogatory No. 11

IDENTIFY the combined amount of funds NYPIRG received from the student activity fee at Brooklyn College in fiscal year 2007/08 (including the Fall 2007 and Spring 2008 semesters and both summer sessions in 2008).

Response To Interrogatory No. 11

President Kimmich objects to this interrogatory as beyond the scope of Local Rule 33.3. Without waiving the foregoing objection, $137,326.00

Interrogatory No. 12

IDENTIFY, in order by highest to lowest amount, the ten (10) registered student organizations that received the most funding from the Brooklyn College student activity fee in fiscal year 2007-08 (including the Fall 2007 and Spring 2008 semesters and both summer sessions in 2008).

* * *

APPENDIX M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, et al.,	:	**DEFENDANT PRESIDENT KIMMICH'S FIRST SET OF REQUESTS FOR PRODUCTION**
Plaintiffs,	:	
-against-	:	
	:	08 Civ. 6585 (LAK) (JCF)
BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al.,	:	
Defendants.	:	

* * *

Document Request No. 4

The portion of each NYPIRG financial report provided to YOU from academic year 1995-96 to academic year 2004-05 CONCERNING NYPIRG PROJECTS relating to the Brooklyn College campus, which: (a) lists NYPIRG's PROJECTS in the form prescribed in Appendix AA of CUNY's fiscal accountability handbook; and (b) describes any "Homeless" or "Student Empowerment" related PROJECTS.

Response To Document Request No. 4

President Kimmich objects to this request as overly broad in time, and seeking documents that are neither relevant nor likely to lead to the discovery of admissible evidence. Without waiving the foregoing objections, plaintiffs are referred to the documents produced herewith within bates range CUNY 2221-2353.

Document Request No. 5

ALL DOCUMENTS generated by YOU, including, but not limited to minutes, memoranda, email and notes, CONCERNING your procedures for review AND/OR approval of NYPIRG's "financial disclosure" as required under CUNY fiscal accountability handbook, section XIV.A. (or any predecessor rule).

Response To Document Request No. 5

President Kimmich objects to this request as overly broad in time, and seeking documents that are neither relevant nor likely to lead to the discovery of admissible evidence. Without waiving the foregoing objections, plaintiffs are referred to the documents produced herewith within bates range CUNY 5187.

* * *

APPENDIX N

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Olivia Almengor, Marissa Schain, and Daniel Bogatin, *Plaintiffs,* - against- Benno C. Schmidt, *in his capacity as Chairman of the Board of Trustees of the City University of New York*, Philip Alfonso Berry, Valerie Beal, Rita Dimartino, Freida D. Foster-Tolbert, Joseph J. Lhota, Hugo M. Morales, Peter S. Pantaleo, Kathleen M. Pesile, Carol A. Robles Roman, Marc V. Shaw, Charles A. Shorter, Sam A. Sutton, Jeffrey S. Wiesenfeld, Robert Ramos, Manfred Philipp, *in their capacities as trustees of the City University of New York*, and Christoph M. Kimmich, *in his capacity as the President of Brooklyn College*, *Defendants.*	Civ. No. 08-cv-6585-LAK Hon. Lewis A. Kaplan, D.J. Hon. James C. Francis, M.J. **Statement of Material Facts in Support of Plaintiffs' Motion for Summary Judgment**

STATEMENT OF MATERIAL FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

* * *

17. Neither Defendant Kimmich nor his predecessors approved NYPIRG's refund procedures. [September 24, 2008 letter from the Brooklyn College Records Access Officer and her attachment thereto of NYPIRG's refund request forms.]

18. RSOs engaging in a wide array of ideological activities are eligible to receive a portion of the student activity fee under terms and conditions set forth in CUNY and local college—in this case Brooklyn College—regulations. [City University of Fiscal Handbook for the Control and Accountability of Student Activity Fees ("CUNY Fiscal Accountability Handbook") and Brooklyn College Students Organizations: Fiscal Accountability Guidelines ("BC Fiscal Accountability Guidelines").]

19. Such RSOs—which represent the rich and positive diversity of social, ethnic, political and religious viewpoints on the Brooklyn College campus—have included Adventist Students for Christ, Anti-War Coalition, Asian Student Union, Association for Women in Science, Black Family Organization, Chinese Language and Culture Club, College Democrats, Desi Culture Club, Chinese Christian Fellowship, Dominican Student Movement, Hillel Club, Haitian American Student Association, Hispanic Society, International Socialist Club, Intervarsity Christian Fellowship, Islamic Society, Jewish National Fund on Campus, Lesbian, Gay, Bisexual, Transgendered Alliance, National Association for the Advancement of Colored People,

New York State Israel Public Affairs Committee, Pan-African Student Alliance, Puerto Rican Alliance, Ramadan Committee, Students for Academic Freedom, Revolutionary Alliance of Womyn, and the Young Republicans. (Compl. ¶ 4; Amended Answer ¶ 4.)

20. Ideological RSOs are generally funded from student fees through the Student Government, either CLAS (full-time) or SGS (part-time). [Brooklyn College Student Clubs Organization directory.]

* * *

APPENDIX O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, MARISSA SCHAIN, DANIEL BOGATIN, Plaintiffs, -against- BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al., Defendants.	NOTICE OF CROSS-MOTION 08 Civ. 6585 (LAK)(KNF) (ECF Filing)

PLEASE TAKE NOTICE that defendants will cross-move this Court, at the Courthouse, 500 Pearl Street, New York, New York, at a date and time to be determined by the Court, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure granting defendants summary judgment, together with such further relief as the Court deems just and proper.

Dated: New York, New York
December 23, 2008

Respectfully submitted,
ANDREW M. CUOMO

Attorney General of the
State of New York
Attorney for Defendants

By:

/s/
CLEMENT J. COLUCCI
Assistant Attorney
General
120 Broadway
New York, New York
10271
(212) 416-8634
Clement.Colucci@ag.ny.gov

TO: PHINEAS E. LEAHEY, ESQ.
Attorney for Plaintiffs
222 East 41st Street
New York, New York 10017

APPENDIX P

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, MARISSA SCHAIN, DANIEL BOGATIN, Plaintiffs, -against- BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al., Defendants.	**DEFENDANTS' RESPONSE TO PLAINTIFFS' LOCAL CIVIL RULE 56.1 STATEMENT** 08 Civ.6585 (LAK)(JCF)

* * *

7. Admit.

8. Admit.

9. Admit.

10. Deny, except admit that Brooklyn College allocates $5.00 of the student activity fees assessed from each student during summer sessions to NYPIRG. (Defendant's Exhibit ["DX"][1] 2) However, the allegations contained therein should be disregarded because plaintiffs have failed to offer admissible evidence to support them.

[1] All references herein to defendants' exhibits (e.g., "DX") are made to those documents annexed to the Declaration of Clement J. Colucci.

11. Admit. However, the allegations contained therein should be disregarded because they are not material.

12. Admit the allegations contained therein insofar as they pertain to CUNY's fiscal requirements.

13. Deny, except admit that in some years NYPIRG has received more than $100,000 from Brooklyn College student activity fees. (Amended Answer, ¶84) However, the allegations contained therein should be disregarded because they are not material, they are not supported by the cited evidence, and plaintiffs have failed to offer admissible evidence to support them.

14. Admit.

15. Admit, and affirmatively state that the NYPIRG fee is also refundable upon in-person request to the Brooklyn College Central Depository. (Declaration of Milga Morales ["Morales Decl."], ¶ 6, Defendants' Exhibit ["DX"] 6)

16. Admit.

* * *

APPENDIX Q

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, MARISSA SCHAIN, DANIEL BOGATIN, Plaintiffs, -against- BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al., Defendants.	**DECLARATION OF MILGA MORALES** 08 Civ. 6585 (LAK)(KNF)

* * *

satisfied with them. That is all the "approval" required.

A. The NYPIRG-Related Procedure

3. One of the two available refund options is for students to seek a refund of student activity fees directly from NYPIRG. A student seeking a refund directly from NYPIRG may go to NYPIRG's campus office, currently located at 0302 James Hall, at any time during each semester (as well as a specially-publicized two-week period each semester) and fill out a refund request form. A true and correct copy of NYPIRG's current refund request form and refund

notice is attached as Exhibit 5 to the accompanying Declaration of Clement J. Colucci.[1]

4. Because only fee-paying students are eligible for refunds, and because the refund is paid by check, the refund form asks for certain basic information allowing NYPIRG to verify that the student is, indeed, a fee-paying student, and to mail the refund check. The information sought is the student's school, name, address, student ID number, and the semester for which the refund is sought.

B. The Central Depository Procedure

5. Starting with the 2000-2001 academic year, Brooklyn College implemented an alternative refund procedure because some students said they preferred not to have to ask for their refund at the NYPIRG office, where, they said, NYPIRG representatives sometimes tried to persuade them not to claim their refunds.

6. Whether NYPIRG representatives were, in fact, trying to persuade students not to claim their refunds or not, this seemed like a reasonable request. Therefore, Brooklyn College implemented an alternative refund procedure, under which students could request refunds at Brooklyn College's Central Depository, where students who provide their names, addresses, and student ID numbers will be mailed a refund check. The new procedure was publicized starting in the 2002-2003 Brooklyn College Bulletin and is publicized in the current edition. See Ex. 6.

---

[1] True and correct copies of all exhibits referenced herein are attached to the accompanying Declaration of Clement J. Colucci, and will be cited herein, as e.g., "Ex. 1."

The Central Depository processes on average one or two refund requests each year.

Executed in Brooklyn, New York, this 22 day of December, 2008.

/s/
MILGA MORALES

APPENDIX R

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, MARISSA SCHAIN, DANIEL BOGATIN, Plaintiffs, -against- BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al., Defendants.	**DECLARATION OF CLEMENT J. COLUCCI** 08 Civ. 6585 (LAK)(KNF)

* * *

3. Annexed hereto as Exhibit 2 is a true and correct copy of selected pages from the current edition of the Brooklyn College Student Handbook, authenticated at Fields Decl., ¶ 4.

4. Annexed hereto as Exhibit 3 is a true and correct copy of an extract from the June 29, 1987 meeting of the Board of Trustees of The City University of New York, authenticated at Fields Decl., ¶ 15, n. 5

5. Annexed hereto as Exhibit 4 is a true and correct copy of the current edition of The City University Fiscal Handbook for the Control and

Accountability of Student Activity Fees, authenticated at Fields Decl., ¶ 17.

6. Annexed hereto as Exhibit 5 is a true and correct copy of the current materials used in connection with obtaining refunds of mandatory student activity fees paid to the New York Public Interest Research Group, authenticated at paragraph 3 of the Declaration of Milga Morales ("Morales Decl.").

7. Annexed hereto as Exhibit 6 is a true and correct copy of selected pages from the 2002-2003 edition and the current edition of the Brooklyn College Bulletin, authenticated at Morales Decl., ¶ 6.

8. Annexed hereto as Exhibit 7 is a true and correct copy of Plaintiffs' Responses to Defendants' First Set of Interrogatories.

Executed in New York, New York, this 23d day of December, 2008.

/s/ Clement J. Colucci
CLEMENT J. COLUCCI

APPENDIX S

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, et al., Plaintiffs, -against- BENNO C. SCHMIDT, in his capacity as Chairman of the Board of Trustees of the City University of New York, et al., Defendants.	**PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANTS' FIRST SET OF INTERROGATORIES** 08-cv-6585 (LAK)(JCF)

* * *

complete a refund request form similar to or identical to that attached as Exhibit 6 to the Affidavit of Phineas E. Leahey in support of Plaintiffs' motion for summary judgment ("Leahey Aff.") Several weeks later, NYPIRG, Inc. would send a check to her home address. (At that time, the NYPIRG fee, and hence refund, for full-time students was $3.00 per semester.)

Reason for Not Requesting A Refund

For all three Plaintiffs, the above-described process for requesting a refund in the NYPIRG office is: (1) burdensome for the amount of funds involved; (2) invasive; (3) dilatory; and (4) inherently

confrontational (all of which Ms. Almengor has experienced first hand when she went to the NYPIRG office). On some occasions, when Ms. Almengor appeared for a refund, she was told by NYPIRG members or staff in the office to come back later because refund slips were not available. Ms. Almengor does not recall which semesters she might not have returned to complete the process.

Plaintiffs are further deterred from engaging NYPIRG in this process due to various reports in student newspapers at CUNY colleges of NYPIRG's harassment and intimidation of, and collecting confidential information on, dissenting students, including those petitioning to hold referenda to decrease or eliminate the NYPIRG fee. (*See* newspaper articles from various CUNY colleges, including Brooklyn College, collectively attached hereto as Exhibit C.) Plaintiff Almengor experienced such conduct herself when in the mid-1990s she was followed on campus by a NYPIRG member while petitioning to collect signatures for a referendum to decrease NYPIRG's mandatory student fee funding.

* * *

APPENDIX T

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

OLIVIA ALMENGOR, MARISSA SCHAIN, DANIEL BOGATIN, Plaintiffs, - against- Benno C. Schmidt, in his capacity as Chairman of the Board of Trustees of the City University of New York, Philip Alfonso Berry, Valerie Beal, Rita Dimartino, Freida D. Foster-Tolbert, Joseph J. Lhota, Hugo M. Morales, Peter S. Pantaleo, Kathleen M. Pesile, Carol A. Robles Roman, Marc V. Shaw, Charles A. Shorter, Sam A. Sutton, Jeffrey S. Wiesenfeld, Robert Ramos, Manfred Philipp, in their capacities as trustees of the City University of New York, and Christoph M. Kimmich, in his capacity as the President of Brooklyn College, Defendants.	**AMENDED ANSWER** 08 Civ. 6585 (LAK) (KNF) *ORIGINAL FILED VIA ECF*

* * *

80. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 80 of the complaint.

81. Deny the allegations contained in paragraph 81 of the complaint.

82. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 82 of the complaint, except admit that in 2006 the College Association was delayed in meeting with a quorum, delaying the funding of RSOs other than those, like NYPIRG, funded through a different mechanism.

83. Admit the allegations contained in paragraph 83 of the complaint insofar as they pertain to CUNY's fiscal requirements.

84. Deny the allegations contained in paragraph 84 of the complaint, except admit that in some years NYPIRG has received more than $100,000 from Brooklyn College student fees and is governed by different rules than certain other RSOs.

85. Deny the allegations contained in paragraph 85 of the complaint, and refer the Court to the document cited for a complete and accurate statement of its contents.

86. Deny the allegations contained in paragraph 86 of the complaint, and refer the Court to the document cited for a complete and accurate statement of its contents.

87. Deny the allegations contained in paragraph 87 of the complaint.

88. Deny the allegations contained in paragraph 88 of the complaint.

89. Deny the allegations contained in paragraph 89 of the complaint.

90. Deny the allegations contained in paragraph 90 of the complaint.

91. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 91 of the complaint, except admit that, upon information and

* * *

APPENDIX U

BROOKLYN

COLLEGE

CERTIFIED MAIL/RRR

September 24, 2008

Ms. Marissa Schain
2271 East 71s Street
Brooklyn, NY 11234

Re: Freedom of Information Law Request

Dear Ms. Schain:

In my letter of September 17, 2008, in response to your Freedom of Information Law request, I indicated that I would provide you with document describing NYPIRG's procedures under separate cover. I enclose a copy of NYPIRG's Refund Request form as well as a flyer distributed by NYPIRG, publicizing its refund policy and procedures. I have no record showing that this procedure was approved by President Kimmich or his predecessors in office.

Sincerely,

/s/ Pamela J. Pollack

Pamela J. Pollack

Records Access Officer

Enc.

Office of the Director of Legal Services

Brooklyn College of The City University of New York

2900 Bedford Avenue • Brooklyn, New York 11210-2889 • Telephone (718) 951-3118 • Fax (718) 951-4342

REFUND REQUEST

New York Public Interest Research Group

This form is be filled out by any student who does not wish to support NYPIRG and its activities. If you are unsure of what NYPIRG is or does, please read the literature available at the NYPIRG office before completing this form.

What is NYPIRG?

NYPIRG, the New York Public Interest Research Group, is a student-directed education and advocacy organization. NYPIRG teaches students the skills they need to be more effective citizens in our society. NYPIRG advocates affordable higher education, environmental and consumer protection and government accountability and gives students a voice on other important issues that affect them.

NYPIRG is funded as part of the mandatory student activity fee that funds other student organizations. NYPIRG funding was approved by a campuswide student vote. NYPIRG offers a refund to any student who does not want to support NYPIRG for any reason.

School_____

Name_____

Street Address_____

City/Town_____

State_____**Zip**_____

Student ID number_____

Semester for which refund is required_____

"I understand that by claiming this refund, I am expressing my desire not to support NYPIRG and not to participate in NYPIRG activities. I also understand that I will not be entitled to any benefits or privileges accruing to those who do not request a refund.

_____

Signature

_____

Date

_____

Signature of Project Coordinator

For office use only.
Date_____
Check No. _____

white-central office
yellow-campus office
pink-student receipt

New York Public Interest Research Group

NYPIRG announces

REFUNDS

Students on this campus voted to support a NYPIRG chapter. Like other clubs and organizations on campus, NYPIRG is funded through the mandatory student activity fee. Unlike any other club or organization, NYPIRG offers to refund the portion of the student activity fee earmarked for NYPIRG in case any students does not wish to contribute.

NYPIRG is a unique student advocacy organization — the state's largest. Students from 20 colleges and universities pool resources and hire a professional staff to help them effect change in New York State. NYPIRG provides internships and other opportunities for students to take learning beyond the classroom. NYPIRG students learn to:

- ADVOCATE for more state funding for higher education and a reduction in tuition
- OPERATE a book exchange that saves students hundreds of dollars every year
- COORDINATE on campus food and clothing drives to help the homeless of New York
- ORGANIZE for better transit service and win discount fare passes for New York City subway and bus riders
- REGISTER students to vote and much more . . .

To request a refund or further information come to:

Room: 0302 James

Phone: 859-7177
Refund Amount: $3 CLAS
$2 SGS

APPENDIX V

Dave Bryan

From: Dave Bryan

Sent: Tuesday, February 04, 2003 3:24 PM

To: Milga Morales

Subject: NYPIRG report 2001-2002

The report does reflect that the expenditures did benefit Brooklyn College students however I recommend that individual costs for office supplies, copying costs, publication, transportation, etc. for the various projects be noted under the respective projects.

Although the total expenditure exceeds the total revenue, $56,551.00, received for the fiscal year 2001-2002) the total expenditure is incorrect. Also note that the total revenue listed on page 43 is $56,475.00 – (a difference of $76.00).

$3,029.78 Higher Education process

$1,732.55 Environmental projects

$2,230.44 Consumer Action Projects

$2,210.24 Campaign to end Sweatshops and the Hunger and Homelessness Prevention Project

$2,163.70 NYPIRG Straphangers Campaign

$3,168.97 Voter Registration, Participation. Government Reform and Local Projects

$46,668.15 BC Campus Project Coordinators and Regional Supervisors

$5,734.31 Operating Expenses

$2,745.02 Participation in Internship Programs

$1,820.34 Participation in State Board Directors

$71,503.50 Total Expenditure – **This figure differs by $1,807.13 from their total expenditure of $73,310.63 on pg 43.**

Dave Bryan

Dave has reviewed and all is in order w/relation to the questions posed in the letter from VC Hill

/s/ Milga

APPENDIX W

ABOUT CUNY MISSION • FACULTY • RESEARCH • ACADEMIC PROGRAMS • HONORS COLLEGE • STUDENTS • ALUMNI • LIBRARIES • FINANCIAL AID • TUITION • HOW TO APPLY

* * *

The City University of New York

The City University of New York is the nation's largest urban public university. Founded in New York as the Free Academy, CUNY comprises 23 institutions: 11 senior colleges, six community colleges, the William E. Macualy Honors College at CUNY, the Graduate School and University Center, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies, and the Sophie Davis School of Biomedical Education. The university serves more than 231,000 degree-credit students and 230,000 adult, continuing and professional education students. Now, the University's academic enrichment program for 32,500 high school students, is offered at CUNY campuses and at more than 300 high schools throughout the five boroughs of the City of New York. The University offers online baccalaureate degrees through the School of Professional Studies and individualized degrees. The University Teacher Academy provides free tuition for highly motivated

minority student majors who seek teaching careers in the city.

Learn more about New York City and New York State.

Mission

CUNY traces its beginnings to the founding of the Free Academy, which later became CUNY college. According to New York State Education Law, CUNY is "supported as an independent provider of higher education on the assumption that the University will continue to maintain and expand its commitment to excellence and to the provision of equal access and opportunity for students, faculty and staff from all groups and from both sexes."

* * *

BROOKLYN COLLEGE

Student

Organizations

With over 15,000 students at BC, the student clubs & organizations represent a wide variety of backgrounds and interests from basketball to basketweaving! Given the diverse cultures and ethnicities present on our campus, we are sure there is something here for you. So if you need a change of scene, come and explore our site and become part of our vibrant and growing student club body today!

Brooklyn College is using new technology and the Internet to help students achieve their academic goals. Student e-mail, Internet-based course information, as well as interactive information kiosks are just a few of the high-tech services we offer. You may contact the Web Support Group at 718-677-6180 or netgroup@brooklyn.cuny.edu. Also, Information Technology and Services has its own web site with more information about the services we offer at http://infotech.brooklyn.cuny.edu.

General Interest Click here for a useful collection of web links on a variety of topics.

Student E-Mail Info Center. Access your Brooklyn College E-Mail Account via the Internet!

Student Events What's happening?! Come and see on our current and continually updated list of student club events and activities. Be part of the action!

Student Organization Directory Find any existing student organization in our user friendly student club & organizations directory.

APPENDIX X

Minutes of Proceedings, April 28, 1975

MINUTES OF THE MEETING OF THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

HELD

APRIL 28, 1975

AT THE BOARD HEADQUARTERS BUILDING

535 EAST 80 STREET—BOROUGH OF MANHATTAN

The Chairman called the meeting to order at 4:45 p.m.

Alfred A. Giardino, Chairman

Francesco Cantarella	James P. Murphy
Gurston D. Goldin	Vinia R. Quinones
Harold M. Jacobs	Marta Valle

Etta G, Grass, Acting Secretary of the Board

Chancellor Robert J. Kibbee	President Richard D. Trent
President William M. Birenbaum	President Edmond Volpe
President James A. Colston	President Jacqueline G. Wexler
President Candido de Leon	President Clyde J. Wingfield

President Edgar D. Draper	Professor David Valinsky
President Leon M. Goldstein	Mr. Jay Hershenson
President James W. Kneller	Deputy Chancellor Seymour C. Hyman
President Leonard Lief	Vice-Chancellor Mary P. Bass
President James S. Murphy	Vice-Chancellor Julius C.C. Edelstein
President Harold M. Proshansky	Vice-Chancellor Timothy S. Healy
President Donald H. Riddle	Vice-Chancellor Anthony Kerr
President Kurt R. Schmeller	Vice-Chancellor J. Joseph Meng
President Joseph Schenker	Vice-Chancellor Peter S. Spiridon
President Herbert M. Sussman	

The absence of Ms. Hauser, Mr. FitzPatrick and Mr. Williams was excused.

* * *

D. APPOINTMENT OF DISTINGUISHED PROFESSORS:

Professor Taylor is renowned for his concern with innovation in higher education and with creative new approaches to the study of world issues. He has played a definitive role in organizing the United Nations University and has served as Chairman of the U.S. Committee for a U.N. University since 1973.

He also made major contributions to the conception and development of the Friends World College. Dr. Taylor is noted as an outstanding teacher and has many publications to his credits.

The four appointments that are recommended by the Committee on Academic Affairs were previously recruited for designation as Distinguished Professors and, accordingly, the earlier moratorium on appointment of new Distinguished Professors does not apply.

Dr. Goldin stated that a number of members of the University faculty had been awarded Guggenheim and Rockefeller fellowships. He commended their achievement and noted that they had brought honor to the Univeristy.

NO. 3 COMMITTEE ON ADMINISTRATIVE AFFAIRS: RESOLVED, That the following resolutions be adopted:

A. BROOKLYN COLLEGE — CLAS SUPPORT OF NYPIRG:

RESOLVED, That the Board of Higher Education approve an increase of $2.00 in the Brooklyn College Student Activity Fee for CLAS students; and be it further

RESOLVED, That this increase be effective beginning with the registration period for the Fall 1975 semester.

EXPLANATION: The $2.00 increase in the Student Activity Fee is recommended by the President following the referendum of the Brooklyn College CLAS student body. The fee is intended to be used to support the activities of the New York Public Interest Research Group, whose purpose is to

investigate and research public policy issues of special interest to the student membership and thereafter to determine possible solutions to problems so identified.

B. LEHMAN COLLEGE — RESCISSION OF DEGREE:

RESOLVED, That the Board upon the recommendation of the Lehman College Senate, rescind the Bachelor of Science degree awarded to Mr. George V. Koskotas on January 31, 1974, require that Mr. Koskotas return to Lehman College that Lehman College diploma awarded to him on January 31, 1974, and ratify corrective amendments to Mr. Koskotas' official Lehman College transcript.

EXPLANATION: Subsequent to Mr. Koskotas' graduation from Lehman College, it was alleged that the Fordham and New York University transcripts which Lehman College relied upon in awarding Mr. Koskotas 44 transfer credits were incorrect and that the true transcripts from those universities would have entitled him to 6 transfer credits. After a hearing before the Academic Standards and Evaluation Committee of the Lehman College Senate, that committee recommended degree rescission and specific allegations have been sustained and determines that the degree be rescinded and required to be returned, and ratifies the college's decision concerning changes in the Lehman College transcript.

C. QUEENS COLLEGE — DISMISSAL OF CUSTODIAL ASSISTANT:

RESOLVED, That the Board of Higher Education dismiss Mr. Anthony Ballard from position as Custodial Assistant At Queens College effective April

28, 1975 for misconduct on the grounds of consistent insubordination, inadequate work production, poor work attitude and consistent absenteeism without leave, and approve the suspension without pay of Mr. Anthony Ballard for a 30 day period commencing February 14, 1975.

* * *

Minutes of Proceedings, June 28, 1982

MINUTES OF THE MEETING OF THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

HELD

JUNE 28, 1982

AT THE BOARD HEADQUARTERS BUILDING

535 EAST 80 STREET—BOROUGH OF MANHATTAN

The Chairperson called the meeting to order at 4:47 p.m.

There were present:

James P. Murphy, Chairman
Edith B. Everett, Vice Chairperson

Paul P. Baard
Herman Badillo
Blanche Bernstein
Sylvia Bloom
Armand D'Angelo
Jules Kolodny
Albert V. Maniscalco
Robert L. Polk
Joaquin Rivera

Henry Wasser, ex officio
Garth Marchant, ex officio

Martin J. Warmbrand, Secretary of the Board

David B. Rigney, General Counsel & Vice Chancellor for Legal Affairs

Acting Chancellor Leon M. Goldstein
President Milton G.
President Donna E. Shalala
President Joseph

Bassin	Shanker
President Roscoe C. Brown, Jr.	President Joshua L. Smith
President Flora Mancuso Edwards	President Richard D. Trent
Acting President Israel Glasser	President Edmond Volpe
President Bernard W. Harleston	Vice Chancellor Richard M. Catalano
President Robert L. Hess	Vice Chancellor Leo A. Corbie
President Leonard Lief	Vice-Chancellor Julius C.C. Edelstein
President Gerald W. Lynch	Vice Chancellor Donal E. Farley
President Harold M. Proshansky	Vice Chancellor Jerald Posman
President Kurt R. Schmeller	Vice Chancellor Leonard O. Roellig
President Ursula Schwerin	Etta G. Grass, Assistant Secretary of the Board
President Joel Segall	

The absence of Mr. Cavanagh, Mr. Gribetz, Dr. Jacobs and Ms. Titone was excused.

* * *

7) That the total student activity fee for all Graduate Summer Session students be increased from $37.75 to $38.75;

8) That the total student activity fee for all Undergraduates Intersession students be increased from $33.75 to $34.75;

9) That the total student activity fee for all Graduate Intersession students be increased from $29.75 to $30.75,

10) That the NYPIRG fee at Queens College continue to be allocated by NYPIRG;

11) That the fee increase be effective commencing with the Fall 1982 semester.

EXPLANATION: The NYPIRG fee is used to support the activities of the New York Public Interest Research Group, Inc. whose purpose is to investigate and research public policy issues of special interest to the student membership. A referendum was held in accordance with CUNY Bylaw Section 15.10(f), in conjunction with student government elections held May 3 through May 7, 1982. The vote was as follows: Day Session — 2,044 in favor, 1,073 opposed; Evening Session — 107 in favor, 18 opposed; Graduate Division — 108 in favor, 22 opposed to the increase. The college president supports the fee increase. Although NYPIRG has been operating at Queens College since 1973, the NYPIRG fee has never been increased despite the fact that expenses have risen substantially. The college president states that the student vote was in recognition of the need to meet inflation and rising expenses and in recognition of the value of NYPIRG's work at Queens College. There will be a refund provision for the

NYPIRG fee in accordance with college and NYPIRG procedures.

B. BYLAW AMENDMENT: Withdrawn

At this point Mr. Badillo and Dr. Polk left the meeting.

ADDED ITEMS

C. NEW YORK CITY TECHNICAL COLLEGE — INCREASE IN STUDENT ACTIVITY FEE:

RESOLVED, That the Student Activity Fee paid by full-time students at the Brooklyn and Voorhees campuses of New York City Technical College, respectively, be increased from $21.70 to $23.70; that the $2.00 increase be earmarked for NYPIRG (New York Public Interest Research Group, Inc.); that the NYPIRG fee be allocated by NYPIRG; and that the fee increase commence with the Fall 1982 semester.

EXPLANATION: The NYPIRG fee is used to support the activities of the New York Public Interest Research Group, Inc. whose purpose is to investigate and research public policy issues of special interest to the student membership. Referenda were held in accordance with CUNY Bylaw Section 15.10(f), in conjunction with student government elections held May 18 through May 21, 1982 at the Brooklyn campus, and May 19 and May 20, 1982 at the Voorhees campus, respectively. The vote was as follows: Brooklyn campus — 528 in favor, 205 opposed; Voorhees campus — 70 in favor, 31 opposed to the fee increase. New York City Technical College has separate student governments at its Brooklyn and Voorhees campuses. The college president supports the fee increase. There will be a refund

provision for NYPIRG in accordance with college and NYPIRG procedures.

Dr. Bernstein abstained.

D. BROOKLYN COLLEGE — STUDENT ACTIVITY FEE INCREASE:

RESOLVED, That the Student Activity Fee paid by College of Liberal Arts and Sciences students at Brooklyn College be increased from $38.50 to $39.50 effective the Fall 1982 semester, and that the portion earmarked for NYPIRG (New York Public Interest Research Group, Inc.) be increased from $2.00 to $3.00, the NYPIRG fee to be allocated by NYPIRG.

EXPLANATION: The NYPIRG fee is used to support the activities of the New York Public Interest Research Group, Inc. whose purpose is to investigate and research public policy issues of special interest to the student membership. A referendum was held in accordance with CUNY Bylaw 15.10(f), in conjunction with student government elections held May 11 through May 14, 1981. The vote was 1,079 in favor and 426 opposed to the increase. The college president supports the fee increase. There will be a refund provision for the NYPIRG fee in accordance with college and NYPIRG procedures. This proposed fee increase initially came before the Board Committtee on Student Affairs and Special Programs on June 3, 1981, but was then tabled until the Committee had an opportunity to review the testimony present at the June 3, 1981 Public Hearing on Student Activity Fees.

Dr. Bernstein abstained.

NO. 9. COMMITTEE ON FISCAL AFFAIRS:

RESOLVED, That the following item be approved:

A. CENTRAL OFFICE AND SENIOR COLLEGE AUTOMOBILE LIABILITY INSURANCE

RESOLVED, That the Board of Trustees of The City University of New York authorizes the Acting Chancellor or his designee to obtain liability insurance coverage for motor vehicles operated by the Central Office and the senior college for the fiscal year beginning July 1, 1982, or as soon as possible thereafter, at an annual cost not to exceed $200,000. The Secretary of the Board is authorized to execute all necessary agreements and documents, subject to review and approval by the Vice Chancellor for Legal Affairs.

EXPLANATION: The Attorney General of the State of New York represents the University in all matters in which a tort is alleged to have been committed by a senior college employee in the course of employment, including torts involving automobiles. All New York State owned vehicles carry liability insurance, and the Attorney General has requested the University to obtain this insurance, Failure to obtain such coverage could result in severe economic loss to the State and the University.

NO. 10. STUDENT ACTIVITY FEE POLICY: It was pointed out that there is no longer any judicial restraint on the implementation of the student activity fee bylaw. Acting Chancellor Goldstein reported on concerns expressed by Assemblyman Siegel and Senator LaValle with respect to certain aspects of the Student Activity Fee Policy adopted by the Board a year ago and on meetings held by a representative group from the University with the staffs of the Assembly and Senate Committees on Higher Education on this matter. A letter has been

written to Senator LaValle and Assemblyman Siegel in which the Acting Chancellor states the changes in policy that he is prepared to recommend to the Board's Committee on Student Affairs and Special Programs in the fall. He stated that he had consulted with the Chairperson of the Committee on Student Affairs and Special Programs, the Executive Committee of the Council of Presidents, and other Board members. He further reported that a letter from Assemblyman Siegel has been sent in response to his letter. Mr. Siegel stated that he felt the University is acting in good faith and is off to a good start. However, Assemblyman Siegel asked that the new policy postponed until October 1. The Acting Chancellor indicated that he had so informed Vice-Chairperson Everett and Dr. Bernstein and Chairperson Murphy. Mrs. Everett and Dr. Bernstein both stated their desire to proceed with the new policy. They indicated that they would be pleased to consider proposed changes in the fall. The Acting Chancellor then stated that he would ask the college to immediately implement the new policy.

At this point Mr. Baard left the meeting.

NO. 11. UNIVERSITY STUDENT SENATE CENSURE OF UNIVERSITY: Mr. Marchant read into the record the following censure adopted by the University Student Senate:

As the legal and established representative of C.U.N.Y. students, the U.S.S. has decided to censure the University and the Board of Trustees for the following reasons:

4. Lack of respect for C.U.N.Y. students and their student representatives.

5. Changes in C.U.N.Y. Bylaws in reference to student activity fees that violate the rights of students.

* * *

Minutes of Proceedings, June 25, 1984

MINUTES OF THE MEETING OF THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK

HELD

JUNE 25, 1984

AT THE BOARD HEADQUARTERS BUILDING

535 EAST 80 STREET—BOROUGH OF MANHATTAN

The Chairperson called the meeting to order at 4:43 p.m.

There were present:

James P. Murphy, Chairman
Edith B. Everett, Vice Chairperson

Paul P. Baard	Judah Gribetz
Blanche Bernstein	Harold M. Jacobs
Sylvia Bloom	Robert L. Polk
James A. Cavanagh	Joaquin Rivera
Louis C. Cenci	Margaret Titone
Armand D'Angelo	Brenda Farrow White
Henry Wasser, ex officio	Melvin E. Lowe, ex officio

Martin J. Warmbrand, Secretary of the Board

David B. Rigney, General Counsel & Vice Chancellor for Legal Affairs

Chancellor Joseph S. Murphy	President Donna E. Shalala
Deputy Chancellor Houston G. Elam	President Joseph Shanker

President Roscoe C. Brown, Jr.	President Joshua L. Smith
President Jay C. Chunn II	Sr. Vice Chancellor Julius C.C. Edelstein
President Flora Mancuso Edwards	Vice Chancellor Marguerite Ross Barnett
President Robert L. Hess	Acting Vice Chancellor Ira Bloom
President Leonard Lief	Vice Chancellor Margaret L.W. Boepple
President Harold M. Proshansky	Acting Vice Chancellor Leo A. Corbie
President Kurt R. Schmeller	Vice Chancellor Donal E. Farley
President Ursula Schwerin	Vice Chancellor Jerald Posman
President Joel Segall	Etta G. Grass, Assistant Secretary of the Board

The absence of Dr. Kolodny was excused.

* * *

The Faculty Senate considered this charter amendment at its last meeting scheduled for the 1983-84 academic year. In view of the time constraints of the Faculty Senate and the fact that the existent amendment procedure for the City College Governance Charter was unworkable and then in the process of amendment by the Board of Trustees, the President of the College, with the

support of the leaders of the three student governments, agreed to ask the Board to approve this amendment without compliance with the Charter amendment procedures in effect prior to May 29, 1984.

At this point Mr. Gribetz joined the meeting.

NO. 8. COMMITTEE ON STUDENT AFFAIRS AND SPECIAL PROGRAMS: RESOLVED, That the following items be approved or action taken as noted:

A. BROOKLYN COLLEGE — STUDENT ACTIVITY FEE INCREASE:

(1) COLLEGE OF LIBERAL ARTS AND SCIENCES:

RESOLVED, That the student activity fee paid by College of Liberal Arts and Sciences students at Brooklyn College be increased from $40.50 to $50.55 per semester, effective the Fall 1984 semester, in accordance with the following schedule:

EARMARKED ALLOCATING BODY	FEE
Student Government	$9.50
Student Services Corporation	$17.50
College Association	$19.70
NYPIRG	$3.00
University Student Senate	$.85
TOTAL STUDENT ACTIVITY FEE	$50.55

EXPLANATION: The student activity fee schedule represents a $10.05 increase in the College of Liberal Arts and Sciences student activity fee. Two referenda were held in accordance with University bylaw section 16.12, in conjunction with the student government elections held May 14-16,

1984. The vote on the first referendum for a comprehensive $9.50 fee increase to further support the Kingsman newspaper ($1.25), the Lay Advocate Program ($.75), athletics ($2.00), and student government ($4.00) was 411 in favor and 276 opposed. A second referendum for a twenty cent increase to be split evenly to support the Brooklyn College Drop-In Center and the Birth Control and Pregnancy Counseling Center received a vote of 470 in favor and 172 opposed. The College President strongly supports these fee increases which he believes will strengthen and enrich student life.

Within the Student Government fee, the following local earmarkings will exist: $1.25 for the Kingsman newspaper, $.20 for the Riverrun Journal, $.75 for the Lay Advocate Program with the remaining $7.30 going to student government, clubs and other activities. Within the College Association fee, the following local earmarkings will exist: $13.00 for Athletics, $1.00 for Emergency Medical, $1.00 for Student Concerts, $1.00 for Radio Station WBCR, $1.25 for the Kingsman newspaper, $.75 for the Lay Advocate Program, $1.50 for the Academic Club Association, $.10 for the Drop-in-Center and $.10 for the Birth Control and Pregnancy Counseling Center. The Student Services Corporation fee is for the Student Center. Local earmarkings at the college have been established and are subject to change at the college in accordance with the referendum process set forth in the University bylaw section 16.12, provided there is no change in the total fee. The earmarkings to the allocating bodies as set forth in the resolution may only be changed by further Board action.

The summer session student activity fee for all students continues to be $21.00, in accordance with the following schedule: $2.50 for student government, $17.50 for the Student Services Corporation and $1.00 for the College Association locally earmarked for Emergency Medical Services.

* * *

APPENDIX Y

The Board of Trustees of
The City University of New York

Bylaws

(Revised September 30, 1998)

ARTICLE XVI — STUDENT ACTIVITY FEES AND AUXILIARY ENTERPRISES

* * *

Section 16.12. REFERENDA.

A referendum proposing changes in the student activity fee shall be initiated by a petition of at least ten (10) percent of the appropriate student body and voted upon in conjunction with student government elections.

a. Where a referendum seeks to earmark student activity fees for a specific purpose or organization without changing the total student activity fee, the results of the referendum shall be sent to the college association for implementation.

b. Where a referendum seeks to earmark student activity fees for a specific purpose or organization by changing the total student activity fee, the results of such referendum shall be sent to the board by the president of the college together with his/her recommendation.

c. At the initiation of a petition of at least ten (10) percent of the appropriate student body,

the college president may schedule a student referendum at a convenient time other in conjunction with student government elections.

d. Where the referendum seeks to affect the use or amount of student activity fees in the college purposes fund, the results of the referendum shall be sent to the board by the college president together with his/her recommendation.

Section 16.13. DISCLOSURE.

a. The college president shall be responsible for the full disclosure to each of the student governments of the college of all financial information with respect to student activity fees.

b. The student governments shall be responsible for the full disclosure to their constituents of all financial information with respect to student government fees.

c. The student activity fee allocating bodies shall be responsible for the full disclosure of all financial information to its membership, to the college and to the student governments with respect to all of its activities.

d. The auxiliary enterprise board shall be responsible for the full disclosure of all financial information to its membership, to the college and to the student governments with respect to auxiliary enterprises.

e. For purposes of the foregoing paragraphs, full disclosure shall mean the presentation each semester of written financial statements

which shall include, but need not be limited to, the source of all fee income by constituency, income from other sources creditable to student activity fee accounts, disbursements, transfers, past reserves, surplus accounts, contingency and stabilization funds. Certified independent audits performed by a public auditing firm shall be conducted at least once each year.

Section 16.14. STIPENDS.

The payment of stipends to student leaders is permitted only within those time limits and amounts authorized by the board.

* * *

APPENDIX Z

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Action Adventure Club	$ -	$200.00	$ -	$200.00	*Didn't submit*	
American Medical Students Association	$1,685.00	$1,685.00	$1,685.00	$2,500.00	$3,800.00	$2,500.00
Arts Coalition				$300.00	$2,900.00	$500.00
Asian Community Health Club			$300.00	$300.00	*Didn't submit*	
BC Anime and Manga Corps	$900.00	$900.00	$600.00	$400.00	$2,400.00	$900.00
BC Cheerleading Squad	$ -	$300.00	$ -	$300.00	$2,000.00	$100.00
BC Cricket Club			$300.00		$1,200.00	$300.00
BC Handball and Hackey Sack Club			$100.00		*Didn't submit*	
BC Mentoring Alliance	$300.00	$300.00	$300.00	$200.00	$1,500.00	$300.00
BC Soccer Club	$ -	$300.00	$300.00	$300.00	$468.00	$300.00
BC Sports and Recreation Club	$ -	$300.00	$ -		*Didn't submit*	
BC Students in Free Enterprise	$ -	$100.00	$300.00		*Didn't submit*	
BC Volleyball			$200.00	$338.14	$500.00	$300.00

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Club						
BC Young Republicans	$ -	$200.00	$ -		*Didn't submit*	
Black Ethnic Health Club					$1,150.00	$300.00
Black Family Organization	$1,000.00	$700.00	$700.00	$700.00	$1,000.00	$700.00
Black Student Union (BSU)	$4,000.00	$4,000.00	$4,200.00	$4,400.00	$5,450.00	$4,700.00
Blue and White Society	$500.00	$500.00	$ -		*Didn't submit*	
Campus Advance	$1,200.00	$1,000.00	$1,500.00	$1,500.00	*Didn't submit*	
Canterbury Club	$ -	$100.00	$ -		*Didn't submit*	
Caribbean Students Union	$6,460.00	$6,460.00	$6,500.00	$6,500.00	$29,150.00	$6,500.00
Chinese Christian Fellowship	$450.00	$450.00	$450.00	$450.00	*Didn't submit*	
Circle K					$300.00	$300.00
College Democrats	$ -	$ -	$ -		*Didn't submit*	
Desi Culture Club	$2,800.00	$2,800.00	$2,800.00	$2,800.00	$6,000.00	$2,800.00
Dominican Student Movement (MEDO)	$2,400.00	$2,647.82	$2,300.00	$2,300.00	*Didn't submit*	$2,300.00
Fencing Club	$ -	$200.00	$ -		*Didn't submit*	
Flatbush Brooklyn Group	$ -	$300.00	$450.00	$400.00	*Didn't submit*	
Francophone Club					$7,000.00	$300.00
Gospel Choir	$	$100.00	$ -		*Didn't*	

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
					submit	
Habitat for Humanity	$300.00	$300.00	$ -		*Didn't submit*	
Haitian American Student Association (HASA)	$ -	$1,000.00	$1,200.00	$1,400.00	$5,110.00	$1,650.00
Hillel Club/Jewish Student Union	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00
Indo West Indian Student Movement			$300.00	$200.00	$500.00	$500.00
Inter-Greek Council (IGC)	$400.00	$300.00	$ -		*Didn't submit*	
International Student Association	$ -	$300.00	$350.00	$350.00	*Didn't submit*	
Intervarsity Christian Fellowship	$2,200.00	$1,900.00	$2,100.00	$2,100.00	$2,500.00	$2,400.00
Islamic Society	$1,300.00	$1,300.00	$3,500.00	$3,500.00	$3,900.00	$3,500.00
Italian American Student Union	$4,150.00	$2,528.59	$2,528.59	$2,000.00	$2,500.00	$2,000.00
JNF (Jewish National Fund)	$1,300.00	$1,000.00	$ -		*Didn't submit*	
Latin Women's Group	$1,300.00	$1,300.00	$1,300.00	$1,000.00	*Didn't submit*	
Legal Professions Society				$300.00	*Didn't submit*	
LGBTA (Lesbian, Gay,	$1,100.00	$1,100.00	$1,500.00	$1,500.00	$2,000.00	$1,500.00

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Bisexual, Transgender, Alliance)						
Ma Nishma	$900.00	$900.00	$ -			
Martial Arts Club	$ -	$250.00	$ -			
NAACP (National Association for the Advancement of Colored People)	$600.00	$500.00	$600.00	$750.00	$800.00	$750.00
National Association of Black Accountants (NABA)	$1,130.00	$1,130.00	$1,130 00	$1,130.00	*Didn't submit*	
Newman Catholic Club	$3,200.00	$3,200.00	$3,200 00	$2,800.00	*Didn't submit*	
NYSIPAC (New York State-Israel Public Affairs Committee)	$1,100.00	$1,000.00	$1,000 00	$1,000.00	*Didn't submit*	
NYWEA (New York Water and Environmental Association)	$ -	$100.00	$100.00	$100.00	*Didn't submit*	
OICE	$ -	$ -	$ -			
Orthodox Club	$1,300.00	$900.00	$1,600.00	$1,800.00	$2,800.00	$2,100.00
Pan African Students Association			$200.00	$200.00	$1,800 00	$500.00
Panamanian Students Union				$300.00	$9,800 00	$300.00
P.E.E.X.S				$300.00	*Didn't*	

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
					submit	
Polish Club	$ -	$200.00	$ -			
Precision Dance Club	$600.00	$1,000.00	$1,300.00	$1,450.00	$2,500.00	$1,450.00
Puerto Rican Alliance (PRA)	$5,000.00	$5,000.00	$5,000.00	$5,000 00	$6,000.00	$5,000.00
RAW (Revolutionary Alliance of Womyn)	$ -	$900.00	$1,200.00	$1,400.00	$2,000.00	$1,600.00
Roots						
Russian-Jewish Club	$2,300.00	$2,300.00	$2,300.00	$2,300.00	$2,300.00	$2,300 00
Seeds of Hope				$300.00	*Didn't submit*	
Shobuj Bangla	$1,300.00	$1,300.00	$1,500.00	$1,500 00	*Didn't submit*	
Students for Academic Freedom	$	$300.00	$500.00	$500 00	*Didn't submit*	
Students for Global Justice				$300.00	$625.00	$500.00
Veterans Student Organization	$1,500.00	$1,500 00	$1,500.00	$300.00	$5,650.00	$500.00
West African Student Association (WASA)	$1,000.00	$1,500.00	$1,350.00	$1,350.00	$2,540.00	$1,500 00
Zionism Club				$200.00	*Didn't submit*	
Past Club Budgets	$59.090.00	$64,551.41	$66,243.59	$68,818.14		
Club Budgets 2007-2008						$59,150.00

BCA Approved – 11/08/07

BCA Approved – 5/7/08

APPENDIX AA

THE CITY UNIVERSITY OF NEW YORK OFFICE OF STUDENT DEVELOPMENT PROPOSAL FOR STUDENT ACTIVITY FEE CHANGE

Please prepare a separate form for each student body. Attach additional documentation where appropriate.

College Brooklyn College

Student body which voted to change the fee CLAS

Working of Referendum on Ballot

Do you wish to expand NYPIRG's services into summer session I (one) and summer session II (two) by increasing each summer session student activity fee by five (5) dollars (refundable) per student per session beginning in the summer session I (one), 2008?

Justification of students for fee change

The student activity fee for NYPIRG on other college campuses is $5.00.

Total student activity fee: current $61.85 proposed $66.85

Earmarking	Current Fee	Proposed Fee	Allocating Body
Student Government	$02.50	$02.50	CLAS
Student	32.50	32.50	SSC

Services Corp.			
College Association	26.00	26.00	BCA
NYPIRG	0	5.00	NYPIRG
University Student Senate	00.85	00.85	USS
Total Student Activity Fee	$61.85	$66.85	

Is a summer fee to be collected? Yes__X____ No___ _____ If a summer fee is to be collected, please provide a breakdown of the fees and all earmarking(s) on a separate page.

Date(s) of Referendum___April 23, 24, 25, 30, 2007

Was the referendum held in conjunction with regular student government elections?

Yes __X____ No_____ If no, please explain.

STUDENT ACTIVITY FEE CHANGE FORM

How was the election conducted?

mail ballot____ registration____ other online vote (computers)
(specify)

polls _____ classroom distribution _____

How was this referendum publicized?

Flyers, College Web Calendar, BC News Network

Total number of students in appropriate student body

9482

Number of valid signatures of appropriate student body on petition 1513

Vote on Referendum by appropriate student body

925 Number Yes

320 Number No

13.1% Percent of eligible students voting

Were the results of the referendum by the Student Election Review certified by the Student Election Review Committee (SERC)? Yes X No___ If no, please explain.

Proposed semester for implementing fee change ___
Fall 2007

Date of last Board resolution (attach copy)___
June 28, 2004

President's Recommendation: Supports X Opposes

President's Comments:

5/18/07	/s/ Kimmich
Date	Signature of College President

Return completed form to:
Office of Vice Chancellor for Student Development
535 East 80th Street
New York, NY 10021

01/06

THE CITY UNIVERSITY OF NEW YORK
OFFICE OF STUDENT DEVELOPMENT
PROPOSAL FOR STUDENT ACTIVITY FEE CHANGE

Please prepare a separate form for each student body. Attach additional documentation where appropriate.

College Brooklyn College

Student body which voted to change the fee
College of Liberal arts and Science

Working of Referendum on Ballot

Do you wish to increase the refundable portion of the student activity fee for full time students allocated to the Brooklyn College chapter of the New York Public Interest Group (NYPIRG) from three (3) dollars per student per semester to five (5) dollars per student per semester (an increase of two (2) dollars per student per semester) beginning in the Fall 2007 semester?

Justification of students for fee change

The student activity fee for NYPIRG on other college campuses is $5.00.

Total student activity fee: current $98.55
proposed $100.55

Earmarking	Current Fee	Proposed Fee	Allocating Body
Student Government	$08.50	$08.50	CLAS
Student Services Corp.	32.50	32.50	SSC

College Association	49.70	49.70	BCA
College Assn./Student Govt.	4.00	4.00	BCA/CLAS
NYPIRG	3.00	5.00	NYPIRG
University Student Senate	0.85	0.85	USS
Total Student Activity Fee	$98.55	$100.55	

Is a summer fee to be collected? Yes__X__ No___ _____ If a summer fee is to be collected, please provide a breakdown of the fees and all earmarking(s) on a separate page.

** See referenda #2

Date(s) of Referendum__April 23,24, 25, 30, 2007__

Was the referendum held in conjunction with regular student government elections?

Yes __X____ No_____ If no, please explain.

STUDENT ACTIVITY FEE CHANGE FORM

How was the election conducted?

mail ballot_____ registration____ other online vote (computers)
(specify)

polls _____ classroom distribution _____

How was this referendum publicized?

Flyers, College Web Calendar, BC News Network

Total number of students in appropriate student body

9482

Number of valid signatures of appropriate student body on petition 1513

Vote on Referendum by appropriate student body

839 Number Yes

406 Number No

13.1% Percent of eligible students voting

Were the results of the referendum by the Student Election Review certified by the Student Election Review Committee (SERC)? Yes X No___ If no, please explain.

Proposed semester for implementing fee change ___
Summer Session I (one), 2008

Date of last Board resolution (attach copy)___
June 28, 2004

President's Recommendation: Supports X Opposes

President's Comments:

5/18/07	/s/ Kimmich
Date	Signature of College President

Return completed form to:
Office of Vice Chancellor for Student Development
535 East 80th Street
New York, NY 10021

01/06

APPENDIX BB

Tuition and Fees

Fees, tuition charges, and refund policies appearing in the Brooklyn College Bulletin(s) and all registration material are subject to change by action of the CUNY Board of Trustees without prior notice. In the event of any increase in the tuition amount, payments already made will be treated as partial payments. Notification will be given of the additional amounts due and the required date of payment. If you have applied and do not wish to attend, you must officially withdraw from all courses before the first day of classes to avoid fees. No transcripts or other records will be released, nor will delinquent students be permitted to register in the future until all financial obligations have been met.

If you do not make full payment on your tuition and fees and other College bills and your account is sent to a collection agency, you will be responsible for all collection costs, including agency fees, attorney fees, and court costs, in addition to whatever amounts you owe to the College.

In addition, nonpayment or a default judgment against your account may be reported to a credit bureau and reflected in your credit report.

Undergraduate Tuition	New York State Resident	Non-State Resident
Matriculated,	$2,000*	$360 per credit-

full time		no limit*
Matriculated, part time	$170 per credit*	$360 per credit-no limit*
Nonmatriculated	$250 per credit*	$530 per credit-no limit*

* Plus Student Activity Fee (DAY – $100.55; EVE – $61.35), CUNY Consolidated Services Fee ($15), and Technology Fee ($75 for full-time study and $37.50 for part-time study).

Graduate Tuition	**New York State Resident**	**Non-State Resident**
Full time	$3,200*	$500 per credit-no limit*
Part time	$270 per credit*	$500 per credit*
Additional contact hours	$65 per additional hour	$85 per additional hour

* Plus Student Activity Fee ($65.10), CUNY Consolidated Services Fee ($15), and Technology Fee ($75 for full-time study and $37.50 for part-time study).

Maintenance of Matriculation	**New York State Resident**	**Non-State Resident**
Graduate only	$750	$1,250

Cooperating teachers must present, each semester, a written certificate of waiver of tuition that may be used for one 3-credit course. Teachers who register for more than 3 credits will be required to pay the additional charges.

If you have already graduated with a bachelor's degree from Brooklyn College and have registered for additional courses, your tuition is subject to change.

Definition of Terms Pertaining to Tuition and Fees

1. *New York State Resident* – A resident student is one who has had his or her principal place of abode in New York State for a period of at least twelve consecutive months immediately preceding the first day of classes for the semester for which the residency determination is made, and states his or her intention to live permanently and maintain his or her principal place of abode in New York State.

2. *Full Time* (Undergraduate) – A student who is enrolled for 12 or more credits or the equivalent.

3. *Part Time* (Undergraduate) – A student who is enrolled for fewer than 12 credits or the equivalent.

4. *Full Time* (Graduate) – A student enrolled for 12 or more graduate credits. A student may be classified as full time with fewer than 12 credits on the basis of thesis, comprehensive examination or language preparation, a graduate fellowship, an internship, or independent course work. The graduate deputy chairperson of the department and the Office of the Registrar must approve all requests for full-time certification. Students certified as full time must pay applicable full-time tuition arid fees.

5. *Maintenance of Matriculation Fee* (Graduate) – A fee payable by students who do not register for courses in the semester in which they obtain the degree or certificate and in the semesters in which they wish to use Brooklyn College's facilities.

6. *Activity Fee* and/or *Consolidated Fee* – The Activity and/or Consolidated Fee is paid by all

students each semester in which they register for courses. It covers the use of the library, campus facilities, free admission to social and cultural events, and maintenance and amortization of the Student Center.

Undergraduate tuition for continuing matriculated students

New York State residents

Full-time	$2,000 per semester
Part-time	$170 per credit

Nonresidents and international students

Full-time	$360 per credit (no limit)
Part-time	$360 per credit

Undergraduate tuition for nondegree students

Nondegree students pay tuition according to the following schedule:

New York State residents

$250 per credit (no limit)

Nonresidents and international students

$530 per credit (no limit)

Student classification

New York State residents

To be classified as a New York State resident an applicant must have resided in the state of New York for the twelve-month period preceding the first day of classes of the term in which the student enrolls.

The applicant must state his or her intention to live permanently and maintain his or her principal place of residence in New York State.

Out-of-state residents

Students classified as out-of-state residents pay tuition as nonresident students. Newly admitted students may apply to have their status changed to New York State residents in the Admissions Information Center, 1103 James Hall. Continuing students may apply to have their status changed to New York State residents by filing a City University residence form in the Office of the Registrar, 1108 Boylan Hall. Students should contact the appropriate office listed above for further information. Applicants for residency who are under eighteen years of age must submit certified copies of a parent's or guardian's federal and city income tax forms. Students who were admitted to Brooklyn College with an immigration permanent resident card must submit the card at the time of filing the residence form.

Additional information and requirements are contained on the City University residence form.

An applicant for residency who does not provide the required information or documentation may be classified as an out-of-state resident

Full-time students. Matriculated students who are enrolled for at least 12 credits or the equivalent each term are classified as full-time students.

Part-time students. Students who are enrolled for fewer than 12 credits or the equivalent each term are classified as part-time students. All courses taken by part-time students are billed on a per-credit basis

except compensatory, developmental, and remedial courses, which are billed on a contact-hour basis. The Schedule of Classes published each term lists these courses. The tuition charged part-time students on a per-credit basis in anyone term may not exceed the term rate for full-time students.

Summer and January intersession tuition

Students enrolled in the summer session and January intersession pay tuition at the per-credit rate according to their classification.

Student Activity Fee

Students pay the Student Activity Fee for each term and summer session in which they enroll. It covers funding of student government, student organizations, and College newspapers; use of athletic equipment and campus facilities; admission to certain social and cultural events; and maintenance and amortization of the Student Center.

Day students

Student Activity Fee:	$98.55
Student Center	$32.50
College associations	$62.20
NYPIRG (New York Public Interest Research Group)	$ 3
University Student Senate	$ 0.85
CUNY Consolidated Services Fee:	$15
Technology Fee: $75 per term, full-time students; $37.50 per term, part-time students	

Evening and weekend students

Student Activity Fee:	$61.35
Student Center	$32.50
College associations	$26
NYPIRG (New York Public Interest Research Group)	$ 2
University Student Senate	$ 0.85
CUNY Consolidated Services Fee:	$15
Technology Fee: $75 per term, full-time students; $37.50 per term, part-time students	

Summer sessions–all undergraduate students

Student Activity Fee:	$61.85
Student Government	$ 2.50
Student Center Board	$32.50
College associations	$26
University Student Senate	$ 0.85
CUNY Consolidated Services Fee:	$15
Technology Fee: $75 per term, full-time students; $37.50 per term, part-time students	

Special fees

Accelerated study	$100 for 18.5 to 20 credits; $230 for 20.5 to 22 credits; $460 for 22.5 to 24 credits; $690 for 24.5 or more credits.
Application	$65 for first-year students $70 for transfer students

Application for readmission	$10
Duplicate diploma	$15
Duplicate record	$5 for each duplicate of any receipt or similar item.
Late payment	$15 for students who are delinquent in paying tuition and fees by the deadlines indicated in the *Schedule of Classes* and on the tuition bill.
Late registration	$25
Library fines	Students should consult the library for the policy on fines.
Material fees	Some courses entail a fee to cover the costs of special materials, film rental charges, transportation, field trip expenses, or other noninstructional costs. Material fees are subject to change and are nonrefundable. Details may be found in each term's *Schedule of Classes.*
Program change	$18 for adding a course, changing from one course to another, or changing from one section to another if changes are made at one time.
Replacement of ID card	$5
Reprocessing	$15 for a check returned by bank as uncollectible.
Special Baccalaureate	$50 for evaluation of life

Program for Adults	experience.
Special examination	$25 plus $5 for each additional examination.
Speech and Hearing Center	$200 for speech-language diagnostic evaluation: $150 for audiological evaluations; $700 for fourteen forty-five-minute individual speech therapy sessions one time per week; $1,260 for fourteen individual speech therapy sessions two times per week; $120 per semester for aphasia group. Brooklyn College students, staff, and faculty with valid College ID receive a 40 percent discount.
Transcript	$7, waived for transcripts sent to the admissions offices of other units of the City University.

Graduate Division tuition for undergraduate students

Brooklyn College undergraduate students who take graduate courses for graduate credit pay applicable resident or nonresident tuition rates set for graduate students and are subject to the maximum tuition rate set for undergraduate students. Graduate Division tuition rates are listed in the *Schedule of Classes* and the Graduate *Bulletin.*

Undergraduate students who take graduate courses for undergraduate credit pay applicable tuition rates set for undergraduate students.

Page	Date	Cnt	Hrs	Credits	EqCred	Div	Bill	Adm	Grp	Major
1/1	05/29/2008	02	16.0	13.0	13.0	D	B	1	3	067

FALL 2008 PLEASE PAY BY THE DUE DATE SHOWN BELOW PLEASE PAY ONLINE OR AT THE ENROLLMENT SERVICE CENTER THE ESC IS LOCATED IN ROOM 0180A, BOYLAN HALL FOR INFORMATION AND TO ENROLL IN THE PAYMENT PLAN PLEASE CONTACT TUITION PAY AT WWW.TUITIONPAY.COM

COURSE CODE	DEPT/ CRS NUM	SECTION	HOURS	CRED	EQ CRED	COURSE TITLE	TUITION	SPECIAL FEE	GRADE	CON
0435	D CC 3	MW12	3.0	3.0	3.0	CMPTG: NAT, PWR, LMTM	510.00			
0730	D EDUC 16	MY2A	4.0	3.0	3.0	12:50-02.05PM NE 135 W/ 125:50 - 02:05PM NE	510.00			
0895	D ENG 18	WQ9	3.0	3 0	3.0		510.00			
0995	D FREN 4	TR11	4.0	3.0	3.0		510.00			
5434	D FED 17	TR2	2.0	1.0	1.0					

ACCT REC F/A APPL	SOURCE	AMOUNT		CHARGES	AMOUNT
NYC COUN CIL SC	B2	$500.00	BROOKLYN COLLEGE	TUIT FT OF RES OH SAF FT DAY 04 CON. SERV/T ECHN O FEE	$2,000.00 $100.55 $90.00 $2,190.55 $500.00
TOT A/R F/A APPLI ED		$500.00		PAY THIS AMOU NT	$1,690.55

Return this portion with payment by CHECK or CREDIT CARD in the enclosed envelope. For CREDIT CARD payments, please complete information below.																				
Check One:			VISA				MASTERCARD							DISCOVER						
CARD#																				

Signature:_____Exp Date:___

DO NOT MAIL CASH
OR VOUCHERS

Amount Due: $1,690.55

Date Due: 07/10/2008

Credits: 13.0

45 200809 1047623127 00 00 01690551 00 00000000
20080710 5

Marissa B. Schain
[redacted]
Brooklyn NY 112[redacted]

BROOKLYN COLLEGE
BURSAR
2900 BEDFORD
AVENUE
BROOKLYN NY 11210-
2889

I understand that I am liable for the full amount of my tuition and fees whether or not I receive, grants, scholarships, or other financial support.

APPENDIX DD

Brooklyn College Student Clubs and Organizations Directory

177 Clubs Total

Brooklyn College

Student

Organizations

Directory

CLAS, SGS, GSO, ACA and REF are organizations that fund stude

Please note: Clubs that do not have board members are not present

Academic Club Association (REF)

Adventist Students for Christ (CLAS)

Alpha Epsilon Phi Sorority (GLO)

Alpha Epsilon Pi Fraternity (GLO)

Alpha Phi Delta Fraternity (GLO)

Alpha Sigma Sorority (GLO)

Alpha Xi Delta Fraternity (GLO)

American Medical Students Association (A.M.S.A.) (CLAS) (SGS) (GSO)

Americans for Informed Democracy (CLAS)

Art Group (ACA)

Arts Coalition (CLAS)

Association for Women in Science (ACA)

Astronomy Society of Brooklyn College (ACA)

Belly Dancing Club (CLAS)

Biology Society of Brooklyn College (ACA)

Black and Ethnic Health Club (CLAS) (SGS) (GSO)

Black Family Organization (CLAS)

Black Graduate Professional Students Organization (B.G.P.S.O.) (GSO) (CLAS)

Black History Month Committee (CLAS)

Black Solidarity Day Committee (CLAS)

Black Student Union (B.S.U.) (CLAS)

Blue and White Society (CLAS)

Broeklundian (REF)

Brooklyn College Accounting Society (CLAS) (ACA)

Brooklyn College Anime and Manga Corps (CLAS)

Brooklyn College Anthropology Club (ACA)

Brooklyn College Anti-War Coalition (B.C.A.W.) (CLAS)

Brooklyn College Chapter of National Broadcasting Society/AERho (ACA)

Brooklyn College Cheerleading Squad (CLAS) (GSO)

Brooklyn College Chess Club (CLAS) (ACA)

Brooklyn College Collegiate Chapter of Music Educators National Conference (CLAS) (GSO) (ACA)

Brooklyn College Cricket Club (CLAS)

Brooklyn College Direct Action (CLAS)

Brooklyn College Economic Graduate Student Association (GSO)

Brooklyn College EMS (REF)

Brooklyn College Entertainment Committee (REF)

Brooklyn College Ethics Society (New) (CLAS)

Brooklyn College Excelsior (REF)

Brooklyn College Graduate Students Guidance and Counseling Organization (GSO

Brooklyn College Hellenic Society (ACA)

Brooklyn College Historical Society (ACA)

Brooklyn College HuMed Pre-Health Professions Club (CLAS)

Brooklyn College Intercollegiate Studies Institute Group (CLAS) (SGS) (ACA)

Brooklyn College Lions Club (New)

Brooklyn College Mentoring Alliance (CLAS) (GSO) (SGS)

Brooklyn College Panamanian Students Organization (CLAS) (SGS) (GSO)

Brooklyn College Philosophical Debate Society (New) (CLAS)

Brooklyn College Philosophy Society (ACA) (CLAS)

Brooklyn College Radio (REF)

Brooklyn College Soccer Club (CLAS)

Brooklyn College Speech and Hearing Graduate Student Association (GSO)

Brooklyn College Student Film Society (REF)

Brooklyn College Student Forensics - Speech and Debate Team (REF) (CLAS) (ACA)

Brooklyn College Tennis League (New) (CLAS)

Brooklyn College Volleyball Club (CLAS)

Brooklyn College's Students for Global Justice (CLAS)

Brooklyn Conservatory of Music Society of Composers (GSO) (CLAS)

Business Leadership Society (ACA) (SGS) (GSO) (CLAS)

Campus Advance (CLAS)

Caribbean Students Union (C.S.U.) (CLAS)

Chemistry Society (ACA)

Chi Iota Omega Sorority (GLO)

Children First Club (CLAS)

Chinese Christian Fellowship (CLAS)

Chinese Language and Culture Club (ACA)

Circle K (CLAS)

CLAS Student Government - Assembly (REF)

CLAS Student Government - Executive (REF)

CLAS Student Government - Joint (REF)

Classical Studies Society (ACA)

Collaborative Media Group (GSO)

Computer Science Society (CLAS)

Desi Culture Club (CLAS)

Dominican Student Movement (M.E.D.O.) (CLAS)

Electro-Acoustic Ensemble (GSO)

English Graduate Students Organization (GSO)

Financial and Actuarial Society (CLAS) (SGS)

Flatbush Brooklyn Group (CLAS)

Francophone Club (CLAS) (GSO)

Gamma Beta Delta Sorority (GLO)

Geology Society (ACA)

Graduate Art Student Union (GSO)

Graduate Association of Performing and Arts Management (G.A.P.A.M.) (GSO)

Graduate Association of School Psychologists (G.A.S.P.) (GSO)

Graduate English Committee (GSO)

Graduate Journal of Brooklyn College (GSO)

Graduate Organization of Directors of Theatre (G.O.D.O.T.) (GSO)

Graduate Organization of Dramaturgs (GSO)

Graduate Political Science Club (GSO)

Graduate Public Health and Nutrition Club (GSO)

Graduate Theatre Organization (GSO)

Graduate TV/Radio Student Association (GSO)

GSO (REF)

Haitian American Student Association (H.A.S.A.) (CLAS)

Hakol Beseder (CLAS)

Hatikvah (REF)

Health and Nutrition Science Club (CLAS) (ACA)

Hillel Club (CLAS)

Hispanic Society (ACA)

Indo-West Indian Student Movement (CLAS)

Inter-Greek Council (GLO)

International Socialist Club (CLAS)

Intervarsity Christian Fellowship (CLAS)

Investment Club (GSO) (SGS)

Irish American Students Association (I.A.S.A.) (CLAS)

Islamic Society (CLAS)

Israeli Independence Day Committee (CLAS)

Italian American Student Union (CLAS)

Italian Culture Club (ACA)

Jewish National Fund on Campus (CLAS)

Kappa Phi Chi Sorority (GLO)

Kingsman (REF)

Latin Women's Group (CLAS)

Law Society (CLAS) (SGS)

Lay Advocate Program (REF)

Legal Professional Society (CLAS) (SGS) (GSO)

Lesbian, Gay, Bisexual, Transgender Alliance (L.G.B.T.A.) (CLAS)

Mathematics Club of Brooklyn College (ACA)

Muslim Women's Educational Initiative (M.W.E.I.) (CLAS) (ACA)

NAACP (CLAS)

National Association of Black Accountants (N.A.B.A.) (ACA)

National Association of Hispanic Journalists (ACA) (CLAS)

National Black Science Students Organization (N.B.S.S.O.) (ACA) (GSO) (SGS)

New York Public Interest Research Group (N.Y.P.I.R.G.) (REF)

New York State Israel Public Affairs Committee (N.Y.S.I.P.A.C.) (CLAS)

Newman Catholic Club (CLAS)

Nightcall (REF)

Omega Phi Beta Sorority (GLO)

On Campus (REF)

Pan-African Student Alliance (P.A.S.A.) (CLAS)

Parents and Friends of the Early Childhood Center (CLAS)

Phi Beta Sigma Fraternity (GLO)

Phi Sigma Chi (GLO)

Phi Theta Chi Sorority (GLO)

Physical Education and Exercise Science Club (P.E.X.S.) (CLAS)

Poetry Club (CLAS)

Political Science Club (ACA) (CLAS) (SGS)

Precision Dance Club (CLAS)

Progressive Hatikvah Downtown (P.H.D.) (NON-STD ACTIVITY FEES)

Psychology Club (ACA)

Puerto Rican Alliance (CLAS)

Ramadan Committee (CLAS)

Revolutionary Alliance of Womyn (R.A.W.) (CLAS)

Riverrun (REF)

Russian Jewish Club (CLAS)

Science Fiction and Fantasy Club (ACA)

Seeds of Hope (CLAS) (SGS)

SGS (REF)

Shobuj Bangla (CLAS)

Sigma Alpha Mu Fraternity (GLO)

Sigma Lambda Beta (GLO)

Speech and Hearing Society (ACA)

Student Association of Special Educators (S.A.S.E.) (GSO)

Student Organization For Every Disability United For Progress (S.O.F.E.D.U.P.) (R

Student Union for Bilingual Education (S.U.B.E.) (ACA)

Students for Academic Freedom (CLAS)

Table Tennis League (CLAS)

Teacher Opportunity Corps Graduate Club Organization (GSO)

Thanksgiving Feed The Homeless Committee (CLAS)

The Comedy Club (New) (CLAS)

The Honors Academy Literary Review (New)

The Orthodox Club (CLAS) (SGS)

The Real Thing (T.R.T.)

Undergraduate Theater Organization (ACA)

Unite for Sight Brooklyn College Chapter (CLAS)

United Students League (U.S.L.) (Non-Student Activity Fees)

Universitas Scientiae (CLAS)

V-Day Committee (CLAS)

Veteran Students Organization (CLAS) (SGS) (GSO)

Veterans Day Program Committee (CLAS)

Vice Versa Step Team (CLAS) (GSO) (SGS)

West African Student Association (W.A.S.A.) (CLAS)

Women's History Month Committee (CLAS)

World AIDS Day Committee (CLAS)

Zeta Beta Tau Fraternity (GLO)
Zeta Phi Beta Sorority (GLO)
Zionist Freedom Alliance (CLAS)

APPENDIX EE

Brooklyn College CLAS Assembly Website

About Us	*Good morning, and welcome to the official website of the CUNY Brooklyn College CLAS Student Government Assembly.*
Representatives	
Budget Request Form	
Legislation	**The Next Meeting of the Assembly will be held:**
Meetings	**Tuesday, October 16, 2007** Student Government Office (311), Third Floor, Student Center 1:30 PM
The LSA	
Student Calendar	**Announcements:**
CLAS Budget	**Submit Budget Request forms now; available in the Student Development Office**
Committees	**See the Comprehensive budget and club budgets passed by the CLAS Assembly**
Grant Requests	
College Rules & Regs	LEARN MORE ABOUT HOW BC OPERATES & HOW TO MANAGE STUDENT CLUB MONEY PROPERLY

Student Housing

Contact the Speaker

CLAS SG Newswire

Assembly Forum

Student FAQ

Home

Click here to see the results from the CLAS Elections

Check Back Often; content constantly being added!!!

Club Budgets: Club Budgets

CLAS Student Club Budget

Fiscal Year 2007-2008

Budget of the CLAS Student Government Assembly

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Action Adventure Club	$ -	$200.00	$ -	$200.00	*Didn't submit*	
American Medical Students Association	$1,685.00	$1,685.00	$1,685.00	$2,500.00	$3,800.00	$2,500.00
Arts Coalition				$300.00	$2,900.00	$500.00
Asian Community Health Club			$300.00	$300 00	*Didn't submit*	
BC Anime and Manga Corps	$900.00	$900.00	$600.00	$400.00	$2,400.00	$900.00
BC Cheerleading Squad	$ -	$300.00	$ -	$300.00	$2,000.00	$100.00
BC Cricket Club			$300.00		$1,200.00	$300.00
BC Handball and Hackey Sack Club			$100.00		*Didn't submit*	
BC Mentoring Alliance	$300.00	$300.00	$300.00	$200.00	$1,500 00	$300 00
BC Soccer Club	$ -	$300.00	$300.00	$300.00	$468.00	$300.00
BC Sports and Recreation	$ -	$300.00	$ -		*Didn't submit*	

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Club						
BC Students in Free Enterprise	$ -	$100.00	$300.00		*Didn't submit*	
BC Volleyball Club			$200.00	$338.14	$500.00	$300.00
BC Young Republicans	$ -	$200.00	$ -		*Didn't submit*	
Black Ethnic Health Club					$1,150.00	$300.00
Black Family Organization	$1,000.00	$700.00	$700.00	$700.00	$1,000.00	$700.00
Black Student Union (BSU)	$4,000.00	$4,000.00	$4,200.00	$4,400.00	$5,450.00	$4,700.00
Blue and White Society	$500.00	$500.00	$ -		*Didn't submit*	
Campus Advance	$1,200.00	$1,000.00	$1,500.00	$1,500.00	*Didn't submit*	
Canterbury Club	$ -	$100.00	$ -		*Didn't submit*	
Caribbean Students Union	$6,460.00	$6,460.00	$6,500.00	$6,500.00	$29,150.00	$6,500.00
Chinese Christian Fellowship	$450.00	$450.00	$450.00	$450.00	*Didn't submit*	
Circle K					$300.00	$300.00
College Democrats	$ -	$ -	$ -		*Didn't submit*	
Desi Culture Club	$2,800.00	$2,800.00	$2,800.00	$2,800.00	$6,000.00	$2,800.00
Dominican	$2,400.0	$2,647.8	$2,300.0	$2,300.0	*Didn't*	$2,300.0

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Student Movement (MEDO)	0	2	0	0	*submit*	0
Fencing Club	$ -	$200.00	$ -		*Didn't submit*	
Flatbush Brooklyn Group	$ -	$300.00	$450.00	$400.00	*Didn't submit*	
Francophone Club					$7,000.00	$300.00
Gospel Choir	$ -	$100.00	$ -		*Didn't submit*	
Habitat for Humanity	$300.00	$300.00	$ -		*Didn't submit*	
Haitian American Student Association (HASA)	$ -	$1,000.00	$1,200.00	$1,400.00	$5,110.00	$1,650.00
Hillel Club/Jewish Student Union	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00	$8,000.00
Indo-West Indian Student Movement			$300.00	$200.00	$500.00	$500 00
Inter-Greek Council (IGC)	$400.00	$300 00	$ -		*Didn't submit*	
International Student Association	$ -	$300.00	$350.00	$350.00	*Didn't submit*	
Intervarsity Christian Fellowship	$2,200.00	$1,900.00	$2,100.00	$2,100 00	$2,500.00	$2,400.00
Islamic Society	$1,300.00	$1,300.00	$3,500.00	$3,500.00	$3,900.00	$3,500.00
Italian American Student Union	$4,150.00	$2,528.59	$2,528.59	$2,000.00	$2,500.00	$2,000 00
JNF	$1,300.0	$1,000.0	$ -		*Didn't*	

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
(Jewish National Fund)	0	0			*submit*	
Latin Women's Group	$1,300.00	$1,300.00	$1,300.00	$1,000.00	*Didn't submit*	
Legal Professions Society				$300.00	*Didn't submit*	
LGBTA (Lesbian, Gay, Bisexual, Transgender, Alliance)	$1,100.00	$1,100.00	$1,500.00	$1,500.00	$2,000.00	$1,500 00
Ma Nishma	$900.00	$900.00	$ -			
Martial Arts Club	$ -	$250.00	$ -			
NAACP (National Association for the Advancement of Colored People)	$600.00	$500.00	$600.00	$750.00	$800.00	$750 00
National Association of Black Accountants (NABA)	$1,130 00	$1,130 00	$1,130 00	$1,130.00	*Didn't submit*	
Newman Catholic Club	$3,200.00	$3,200.00	$3,200.00	$2,800.00	*Didn't submit*	
NYSIPAC (New York State-Israel Public Affairs Committee)	$1,100.00	$1,000.00	$1,000.00	$1,000.00	*Didn't submit*	
NYWEA (New York Water and Environmental	$ -	$100.00	$100 00	$100.00	*Didn't submit*	

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Association)						
OICE	$ -	$ -	$ -			
Orthodox Club	$1,300.00	$900.00	$1,600.00	$1,800.00	$2,800.00	$2,100.00
Pan African Students Association			$200.00	$200 00	$1,800.00	$500.00
Panamanian Students Union				$300.00	$9,800.00	$300.00
P E.E.X.S.				$300.00	*Didn't submit*	
Polish Club	$ -	$200 00	$ -			
Precision Dance Club	$600.00	$1,000.00	$1,300.00	$1,450.00	$2,500.00	$1,450.00
Puerto Rican Alliance (PRA)	$5,000.00	$5,000.00	$5,000.00	$5,000.00	$6,000.00	$5,000.00
RAW (Revolutionary Alliance of Womyn)	$ -	$900 00	$1,200.00	$1,400.00	$2,000.00	$1,600.00
Roots						
Russian-Jewish Club	$2,300.00	$2,300.00	$2,300.00	$2,300.00	$2,300.00	$2,300.00
Seeds of Hope				$300.00	*Didn't submit*	
Shobuj Bangla	$1,300.00	$1,300 00	$1,500.00	$1,500.00	*Didn't submit*	
Students for Academic Freedom	$ -	$300.00	$500 00	$500.00	*Didn't submit*	
Students for Global Justice				$300.00	$625.00	$500 00
Veterans	$1,500.0	$1,500.0	$1,500.0	$300.00	$5,650.0	$500.00

Organization Name	2003-2004	2004-2005	2005-2006	2006-2007	Asking for	2007-2008
Student Organization	0	0	0		0	
West African Student Association (WASA)	$1,000.00	$1,500 00	$1,350.00	$1,350.00	$2,540.00	$1,500.00
Zionism Club				$200 00	*Didn't submit*	
Past Club Budgets	$59.090.00	$64,551.41	$66,243.59	$68,818.14		
Club Budgets 2007-2008						$59,150.00
The CLAS Student Government should work with ACA so that in the future clubs are not coming to both organizations for funds.						

APPENDIX FF

RUTGERS NEW BRUNSWICK

Prospective Students | Current Students | Faculty/ Staff | Parents | Alumni

ACADEMICS

ATHLETICS

DIRECTIONS & MAPS

FINANCIAL AID

NEW BRUNSWICK CAMPUS HOME PAGE

REPORTING FINANCIAL CONCERNS

NJPIRG

The New Jersey Public Interest Research Group (NJPIRG) us a nonprofit, nonpartisan public interest organization founded in 1972. NJPIRG has a professional staff of researchers, scientists and attorneys who work with volunteers in the areas of environmental preservation, consumer protection and open government. NJPIRG campus chapters are funded by a voluntary fee, adopted by student referndum. For additional information regarding NJPIRG, visit their website at www.njpirg.org. If you do not wish to pay this fee, you may deduct the NJPIRG amount from your balance due.

FALL 2008 TERM BILL

RUTGERS

THE STATE UNIVERSITY OF NEW JERSEY

Due Date: AUGUST 12, 2008
Late Fee: $125 If Received After The Due Date

HENRY RUTGERS
1766 COLLEGE AVE.
NEW BRUNSWICK,
NJ 08901

SCH 01 ARTS AND SCIENCE

Dear Henry,

On July 17th, the Board of Governor's established the tuition, fees, housing and dining rates for the University. The charges listed to your left are based on your school of enrollment, registered courses and state residency status. Housing and Dining charges are listed if you have contracted for those services. Due to the reorganization of Undergraduate Education in New Brunswick, last year the former "College Fee"

TUITION AND FEES:	
NJ TUITION (Based on 12.0 billable credit hours)	4,634.00
CAMPUS FEE	956.50
MEAL PLAN	2,000.00
CAMPUS HOUSING	3,116.00
SCHOOL FEE	38.00
THEATER TICKETS	135.00
NJ PIRG	11.20
TARGUM	9.75
LESS FINANCIAL AID CREDITS:	
FEDERAL DIRECT LOAN — SUB	(2,709.00)
PERKINS LOAN	(500.00)
AMOUNT DUE	$7,691.45

charges have been split into two fee categories, the "Campus Fee" and "School Fee". Course fees are also displayed. The billed charges may have been reduced by your financial aid award and/or by your UAS/RUTPP semester contract. Please be advised that financial aid funds are used to cover the following charges: tuition, all fees, room, board, Knight Express, NJPIRG, Targum, any outstanding prior account balances and university financial holds. If you make any subsequent changes to your registration, housing or dining charges, you will **not** receive an adjusted bill through the mail, but you may view your account on-line at www.studentabc.rutgers.edu.

You must return the Attendance Confirmation Payment Form (bottom portion of bill) to the University by the due date, even if the amount due is

zero. You may also confirm your attendance on-line. See the payment instructions on the reverse side of this bill and in the enclosed newsletter.

The University accepts Master Card, American Express and Discover credit cards with a non-refundable convenience fee of 2.2% added to the balance paid. Electronic check payments are also accepted with no service fees. Visit our web site for more information or to enroll in our tuition payment plans. Please pay

by the due date listed above to avoid late payment fees.

In accordance with the 1998 Amendments to the Higher Education Act of 1965, the University has made widely available Voter Registration Application forms. The forms are available at your local registrar's office, cashier's office or can be printed from: http://registrar.rutgers.edu/residency.html. Out of state students can obtain voter registration forms from http://www.eac.gov/voter/register%20to%20Vote.

We hope that your upcoming semester at Rutgers University will be an exceptionally rewarding educational experience.

Course No.	Sect.	Title	Credits	Bldg.	Room	Days/Time
01 119150	02	INTRO TO ETHICS	3.0	LSH	AUD	W3 F4
01 512328	01	SCIENCE IN AMER CULT	3.0	MU	211	T2 F2
01 7501	02	ASTRONOMY&COS	3.0	PH	LH	T7 H7

10		MOLOGY		Y		
11 3702 02	01	THE WORLD OF INSECTS	3.0	HC K	138	M4 W4
07 9652 11	03	THEATER APPRECIATION	3.0	HC K	138	T6 TH6

Listed above is your course registration information as of August 12, 2008. For up to the minute course registration information, call New Brunswick at (732) 445-1999, Newark at (973) 353-1999, or Camden at (856) 225-1999. You may also visit http://registrar.rutgers.edu.

All students are required to confirm attendance and pay by the due date, either on-line or by signing and returning the Attendance Confirmation/Payment Form below, even if the amount due is zero, or your account will be assessed a $ 125.00 late fee.

Detach and mail 5 days before the due date. For faster processing, pay on-line.

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

Due Date: AUGUST 12, 2008

ATTENDANCE CONFIRMATION/PAYMENT FORM – FALL 2008

Late Fee: $125 If Received After The Due Date

1-999-99-9999 -017 RUTGERS, HENRY

NJ TUITION	$4634.00	Amount Due			$ 7691.45
FEES	1,129.00	Adjustments — Please Fill in Appropriate Circles (see instructions on reverse side):			
MEAL PLAN	2000.00	o	2.	Financial Aid	$ _____
CAMPUS HOUSING	3116.00	o	3.	No NJPIRG Fee	_____
NJPIRG FEE	11.20	o	4.	UAS	_____

				Monthly Tuition Payment Plan Deduction	
TARGUM	9.75	o	5.	Office Use Only (SA)	_____
FINANCIAL AID CREDITS	(3,209.00)	o	6.	External Scholarships /Third Parties	_____
		o	7.	Remission	_____
I will be attending the University this semester. If my account balance is not paid when due, I acknowledge that I will be responsible for all costs incurred to collect such debt. This may include, but is not limited to late fees, collection costs, Attorney fees and court costs.		Adjusted Amount Due			_____
		o	8.	Late Fee $125 If Received After Due Date	_____
		Amount Enclosed			_____

_____
Signature Date

ADJUSTMENTS You may be able to reduce the Amount Due by claiming certain adjustments on the Attendance Confirmation/Payment Form. If you are eligible to make such an adjustment, please fill in the applicable circle on the front of the payment form and use the instructions provided below.

FINANCIAL AID RECIPIENTS Compare the date of your most recent Financial Aid Award Letter to the date on this term bill. If the term bill date precedes the date of the Financial Aid Award Letter, you may

adjust the Amount Due by the amount of aid currently awarded. Please note, you MUST return the bottom portion of this bill (the Attendance Confirmation) to complete your registration even if your term bill charges are fully covered by financial aid, your balance is zero or you expect a refund. If you subsequently decline or fail to qualify for any portion of the aid awarded you will be required to make an additional payment. To check your current award status or for additional information visit www.studentaid.rutgers.edu or you may call the Financial Aid office in: New Brunswick (732) 932-7057, Newark (973) 353-5151, or Camden (856) 225-6039.

NJPIRG The New Jersey Public Interest Research Group (NJPIRG) is a nonprofit, nonpartisan public interest organization founded in 1972. For additional information regarding NJPIRG, visit their website at www.njpirg.org. If you have been charged for NJPIRG and you do not wish to pay this fee, please fill in the applicable circle on the Attendance Confirmation/Payment Form and deduct the fee from the Amount Due.

TARGUM The Daily Targum is a student-written and student-managed, non profit incorporated newspaper. The newspaper is published Monday through Friday in New Brunswick, while classes are in session during the fall and spring semesters. The Daily Targum iis distributed at various locations through the New Brunswick university campus, and is also available online at www.dailytargum.com. Any registered student who does not wish to fund The Daily Targum may request a refund of the fee by submitting a request in writing. The student may

either bring the refund request in person to the Targum Business Office in Suite 431 of the Rutgers Student Center or mail it to The Daily Targum, PO Box 5063, New Brunswick, NJ 08901. Please visit The Daily Targum website for additional information.

RU/UAS TUITION PAYMENT PLAN (RUTPP) If your UAS semester contract appears on your term bill and does not completely cover your entire term bill charges please submit payment of the amount due with your Attendance Confirmation/Payment Form either through the mail or online (see enclosed instructions). If you have contracted with UAS subsequent to the date on this term bill you may adjust the Amount Due by the amount of your semester contract. The last day to enroll in the UAS payment plan for the Fall semester is August 12, 2008. For more information see the enclosed RU Aware Newsletter, or visit our website at www.studentabc.rutgers.edu.

EXTERNAL SCHOLARSHIPS/THIRD PARTY PAYMENTS External scholarships (e.g., high school achievement awards) and third party payments (e.g., employer provided educational assistance) can be deducted from the Amount Due. Please also provide documentation on company letterhead with all contact information supporting the scholarship or third party payment arrangement.

TUITION REMISSION If you are a full-time employee of the University as of the first day of classes, you and/or your dependent children may be eligible for tuition remission benefits. In order to determine your eligibility and claim your tuition remission benefits, you must complete and submit one of the following forms: RT100 (Graduate

Students), RT101 (Full-Time Employees) or RT102 (Dependent Children) each semester. These forms and detailed instructions including the amount of the benefit can be obtained from any Student Accounting/Business Office.

DINING Meal Plan and RU Express charges, changes, and/or cancellations for New Brunswick students must be directed to the RU Express/Board Plan Office Camden students must contact the Financial Services/Bursar's Office. Only Dining Services authorizes the removal of dining charges from the term bill. For additional information visit http://food.rutgers.edu or call in New Brunswick (732) 932-8041, Newark (973) 353-5998, Camden (856) 225-6164.

HOUSING If you are a new or transfer student on the New Brunswick/Piscataway campuses with questions about your housing charges or about the new meningitis shot requirements for new student in University Housing, please call (732) 932-1001. For all other students, please call your campus housing office at the following numbers: **Busch** (732) 445-0044, **Cook/Douglass** (732) 932-9625, **Rutgers-College Ave** (732) 932-7017, **Livingston** (732) 445-3249, **Graduate (NB/Pisc)** (732) 445-2215, **Newark** (973) 353-1037, **Camden** (856) 225-6471.

HOLDS Outstanding financial obligations owed to the university may adversely affect your ability to register for upcoming semesters. To view your financial holds on-line, visit: https://finservices.rutgers.edu/finhold/.

REFUND CHECKS Refunds will only be disbursed after the student's attendance has been confirmed. **ALL REFUND CHECKS ARE MADE PAYABLE TO**

THE STUDENT. View your account on-line for updated information.

CONTACT INFORMATION Please mail the Attendance Confirmation/Payment Form to the following address: Rutgers, The State University of New Jersey, Term Bill Processing Unit, P.O. Box 1990, Newark, NJ 07101-1990. **If you have any questions concerning your term bill, please call your Student Accounting Information Center at (732) 932-2254 or (732) 932-2259 to leave a voicemail message.** For additional term bill instructions, office locations, hours and on-line access to your student account information, visit our web site at **http://www.studentabc.rutgers.edu.**

PAYMENT OPTIONS You may pay the Amount Due on your term bill via the web or through the mail.

To pay by credit card (MasterCard, American Express or Discover with a 2.2% convenience fee) or to pay by electronic check visit our web site at **www.studentabc.rutgers.edu** and follow the web payment instructions provided.

For mail payments only, you must complete and return the Attendance Confirmation/Payment Form (bottom portion of bill) with your payment in the envelope provided. Make your **check or money order** payable to Rutgers, the State University of New Jersey. Please indicate the student's name and telephone number on the front of the check. Any payments not honored by the bank will be re-deposited and will incur applicable late and penalty fees.

If your charges are completely covered by financial aid, you may mail in your confirmation form in the envelope provided or confirm your attendance online

by following the detailed web instructions available on our website at www.studentabc.rutgers.edu.

LEGAL NOTICES Please review the legal disclosures online at http://oirap.rutgers.edu/disclosure.html. The disclosures are concerning academic programs, drug and alcohol policies, cost of attending, the Equity in Athletics Disclosure Act, the Family Educational Rights and Privacy Act, financial aid, graduation rates, institutional and specialized accreditation, institutional refund policy, licensure, nondiscrimination policy, public safety information, services for students with disabilities, teacher preparation program pass rates, voter registration, and withdrawal from institution. For additional information, you may call the appropriate offices or visit the indicated websites and links.

IMPORTANT INFORMATION The University takes matters of safety and security seriously. That is why the University has implemented a system by which you can receive emergency communications through text message sent directly to your cell phone. It is a mandatory requirement for you to provide and update your emergency contact information to the University. If you do not provide such information, a hold may be placed on your grades and transcripts. Please visit http://personalinfo.rutgers.edu to record your information.

All official correspondence from the University is addressed to the student and mailed to either or both the permanent home and email address that is on file with the University. It is the responsibility of each RU student to make sure their addresses with the university are current and valid in order to receive official notices and term bills from the University.

Failure to receive mail from the University, due to an invalid address, does not excuse late payment fees. Please update your information on http://personalinfo.rutgers.edu.

APPENDIX GG

[EXHIBIT 5 TO COLUCCI DECLARATION]

REFUND REQUEST

New York Public Interest Research Group

This form is be filled out by any student who does not wish to support NYPIRG and its activities. If you are unsure of what NYPIRG is or does, please read the literature available at the NYPIRG office before completing this form.

What is NYPIRG?

NYPIRG, the New York Public Interest Research Group, is a student-directed education and advocacy organization. NYPIRG teaches students the skills they need to be more effective citizens in our society. NYPIRG advocates affordable higher education, environmental and consumer protection and government accountability and gives students a voice on other important issues that affect them.

NYPIRG is funded as part of the mandatory student activity fee that funds other student organizations. NYPIRG funding was approved by a campuswide student vote. NYPIRG offers a refund to

any student who does not want to support NYPIRG for any reason.

School_____

Name_____

Street Address_____

City/Town_____

State_____ **Zip**_____

Student ID number_____

Semester for which refund is required_____

"I understand that by claiming this refund, I am expressing my desire not to support NYPIRG and not to participate in NYPIRG activities. I also understand that I will not be entitled to any benefits or privileges accruing to those who do not request a refund.

_____

Signature

_____

Date

_____

Signature of Project Coordinator

For office use only.
Date_____
Check No. _____

white-central office
yellow-campus office
pink-student receipt

APPENDIX HH

KINGSMAN MONDAY, OCTOBER 7, 1996 PAGE 2

Prof. charges NYPIRG with fraud

By JAMES AQUILONE

A geology seminar titled "Should we tolerate scientific fraud: the case against NYPIRG's research" turned into a shouting match Wednesday between members of the geology society and NYPIRG.

Before geology Prof. Seidemann, who charges that NYPIRG has falsified data, could begin his seminar, members of that group began shouting for a response to the professor's speech.

The seminar, which took place in Ingersoll Hall, was sponsored by the geology society, and was attended mainly by members of NYPIRG and the geology department.

"This is a seminar," geology chairman John Chamberlain told Steven Romalewski, who coauthored one of the reports that Seidermann was criticizing. "If you guys don't shut up, we will get security."

Chamberlain later wrote a letter to Romalewski, saying that he is "welcome to attend our seminars and ask questions during the discussion portion of them, but you must not engage in behavior that stifles debate.

After the seminar began, members of NYPIRG continually interrupted the Geology professor. At one point, he said, "I feel like Jay Leno being heckled."

In the seminar, Seidemann analyzed NYPIRG reports that he claims contain false data. "It is an unwise and dangerous thing," he said of the groups practices.

The focus of the seminar was on a 1986 NYPIRG report about recycling. In the report NYPIRG claims that they have a plan for recycling between 60% and 90% of New York's solid waste stream, reducing the need for incinerators. Seidemann accused NYPIRG of changing figures and making "arbitrary assertions" in the report.

A coauthor of the report, Romalewski argued that Seidemann's criticism isn't a matter of fraud but interpretation. "It's not dishonest, it's a question of interpretation," he said.

Seidemann charged that NYPIRG skewed data in a 1988 report that claimed that the Scholastic Aptitude Test is "virtually meaningless in concluding college grades." According to the professor, NYPIRG handpicked colleges that would agree with their claim. The professor also charged NYPIRG with using clever word games to change data in a report on the acceleration of the Audi 5000 and automobile accidents.

Seidemann is concerned because he believes that if these reports contain false data they will lead to bad public policies. "I support recycling—not lying about data."

Members of NYPIRG accused Prof. Seidemann of the same fraudulent practices that he charged

NYPIRG with, claiming that the professor was using selective data and word games to prove that NYPIRG falsified data.

NEW TECH TIMES
Keeping the World of City Tech Informed
VOL. 39 NO. 4
CIRCULATION 8000 MAY 1994

"NYPIRG FOLLOWED ME TO THE BATHROOM"

The past several weeks have been full of headaches beyond belief for some of the students here at City Tech. In an attempt to get a referendum on the election ballots during student elections, students here at City Tech have been the victims of harassment, physical and verbal assault by members of the New York Public Interest Research Group Inc, (NYPIRG), a non-C.U.N.Y. organization here on campus. "NYPIRG followed me to the bathroom," one female student here at Tech said "and I'm not even a member of the paper or the committee."

NYPIRG receives $3.00 from every full-time student at Tech. This money adds up to approximately $42,000 for the academic year. This organization, however, does not have to turn in a itemized budget like every other student based office on campus.

This raised various concerns amongst students here at Tech which in turn created the "Ad-Hoc Committee For the NYPIRG Referendum at City Tech." This committee, made up of City Tech students, organized a petition whereas the $3.00 from NYPIRG would be reallocated to

[PICTURE OMITTED]

CITY STUDENT WHO HAD THE MICROPHONE TURNED OFF ON HIM BY ADMINISTRATION FOR ASKING A QUESTION ABOUT NYPIRG.

[PICTURE OMITTED]

STUDENT MOB THAT BROKE OUT AFTER STUDENT WAS DENIED TO SPEAK AT CANDIDATES FORUM. (Photo Marisala Guzman)

three student bodies, the student government association, the New Tech Times, and student clubs.

The birth of this petition caused a sudden mobilization of NYPIRG on campus. "All of a sudden I see signs all over the campus about NYPIRG, but I've never heard of them until now," one City Tech student told a reporter from the New Tech Times, but the saga continues.

Allegations have come about from all sides of the table. Members of the New Tech Times newspaper, the as-hoc committee, and other students here at Tech complained to members of administration about NYPIRGers following them to class, to the bathroom, and train station. "Our cries seem to have fallen on deaf ears," Fred Sahakian, Editor of the New Tech Times stated. "Our group had six people with six different scenarios involving students being followed by NYPIRGers, who are not even students here at Tech, and yet there have been no memos, changes, or actions

CONTINUED ON PAGE 4

taken on the part of administration, two things seem obvious, they're watching their own backs, and not prepared to insure the students academic and constitutional rights," he continued with "the limited security in this also embarrassing. One N.Y.P.I.R.G. member has been identified as still being a high school student, so how did he get passed security, and is allowed to travel all parts of this building, its time the appropriate members of administration start doing their jobs." "When I left from the newspaper office a man from NYPIRG stalked me from class to class," a Tech student said, name withheld for protection.

Allegations of fraud spouted out from NYPIRG. In an April 20, 1994 memo to the Student Election Review Committee (S.E.R.C.) from NYPIRG. The memo states, "After viewing this compilation of "signatures" for only one hour, it was undeniably apparent that it is rife with forgery." "Because they didn't see us get the signatures they think the signatures are fraud," said a spokesman for the Ad-Hoc committee "as students were being followed around campus gathering signatures, other students were getting signatures in their class rooms. How could we forge over 1,200 hundred signatures? Students at the College of Staten Island had obtained over 1,000 signatures in four days in their NYPIRG campaign. The fact remains that [the ad-hoc committee and the New Tech Times] do not have access to student lists of names and social security numbers, unlike NYPIRG who has been given a master list of all students of the college and has used the list to call students to verify signatures before the review committee ever determined whether the signatures were acceptable or not, how could the

college turn over a master list the records each students name, social security number, address, major, and the number of credits they are currently taking?"

The topic of NYPIRG was to be a hot discussion at the candidates forum in April 21, 1994 for Student Government elections in the General Building Amphitheater.

Minutes before the forum was to begin candidates were informed that the issue of NYPIRG was not to be discussed according to counsel student candidates.

More than half an hour into the forum the microphone was turned over to the audience for questions, the first question came from a student who asked what NYPIRG does with the money they receive from students. At this point administrators took over the opposite mic and announced that candidates would not answer any questions on NYPIRG.

As the student complained, he had the microphone turned off on him. The next student asked a similar question at which point that mic was again turned off and everyone asked to leave as the forum was canceled.

All of the aforementioned events have led to everyone pulling out their lawyers phone numbers.

In a memo to the college president, Charles W. Merideth, from the counsel representing the New Tech Times and the Ad-Hoc committee, the memo states that:

"Actions by NYPIRG and some college Administrators have violated First Amendment rights of students and have had the appearances of

partiality for NYPIRG. In one of the most flagrant examples, several College administrators prohibited student candidates from discussing NYPIRG or the NYPIRG fee referendum at a pre election forum on April 21st."

In turn a memo, (yes another one), from NYPIRG dated April 28, 1994, States that NYPIRG will be using petition copies to "further pursue NYPIRGs investigation of criminal charges under New York State Penal Code." "This is another ploy to drag out the referendum," The spokesman for the ad-hoc committee stated, "the Election Committee has decided to send the referendum to the college president." In response to criminal charges the spokesman stated, "It's a shame when a multi-million dollar organization, much of which is from student fees, would even think of taking students to court, especially minority students, for demanding they have more money for their clubs and other activities by asking for NYPIRG to leave the campus, NYPIRG must go.

According to members of the ad-hoc committee, one of the main concerns is that C.U.N.Y. students, through forced funding, provide NYPIRG with about half a million dollars. More than 60% of this money goes into several administrative areas such as consultation, salaries, etc.

Throughout the process of validating signatures, concerns of partiality on the part of the Student Election Review Committee members

Members Devendra Laiji and Jose Santos were decided by the committee to be biased on the issue of NYPIRG. Both students were barred from voting on

any NYPIRG issues, but were allowed to participate in discussions on the matter if NYPIRG.

During the May 3, 1994 SERC meeting, each side of the referendum issue was finally given an opportunity to speak to the committee. A total of two minutes was given to each side, the ad hoc committee and NYPIRG. This, however, cleared up nothing since the final decision of the Student Election Review Committee was to turn the complete process over to the college president. "Students should decide to outcome of the NYPIRG issue, let students decide." Jose Santos a CUNY BA student and a former Student Government Officer said. Executive Assistant to the college president, Dorie Clay. Made it clear when she heard that NYPIRG was calling students to verify signatures. "That's out of order," and it's "[administrations] job" to check out the signatures at a May 4, 1994 meeting to discuss petitions.

The final decision has not been made as of yet, but everything is now in the hands of the administration.

ATTENTION ALL CITY TECH STUDENTS:

If you have received any phone calls from the New York Public Interest Research Group Inc., (NYPIRG) over the past several weeks concerning the signing of petitions please go to the Office of the President in room Namm 300 and file your name to assist in the present investigation of inappropriate use of personal student information.

STUDENT DEMOCRACY

***Invasion of the Bodysnatchers* —**

Stalks and Harrasses Student

NYPIRG, Inc. unleashes professional hooligans on pro-democracy students

by Fred Z. Peters

Violenece and harassment were effectively used by the NYPIRG Corporation to quash student-organized democratic campaigns at four CUNY campuses this past spring semester. Ignoring the orders of campus security, the Nader-affiliated New York Public Interest Research Group employed professional campaigners to shadow and intimidate activist students collecting signatures for student election referenda.

These referenda would have enabled students to vote on whether or not to continue funding NYPIRG, Inc. with student activity fee money. Where the aforementioned terror tactics did not succeed in keeping this issue of NYPIRG, Inc.'s "tax" off the election ballots, corrupt officials in college administration and student government interfered with the democratic process to protect NYPIRG from the students' vote.

In the face of growing opposition among students, the self-dubbed "activist and advocacy" group stands to lose nearly a million dollars a year. At 19 campuses statewide, including 7 CUNYs and 10 SUNYs, the money is taken automatically out of the

student activity fee every time a student registers for classes, and is sent straight to corporate headquarters. The money is completely unaudited, making it possible for any college administrator, student government official, or student newspaper editor to be "influenced" by NYPIRG, Inc. without anyone being the wiser for it.

Theoretically, it is possible for students to vote on whether or not to let the corporation continue to tax them this way. University by-laws allow for this and any other question concerning student activity fee money to be settled democratically at student elections with yes-or-no questions (referenda) on the ballots.

In reality, the NYPIRG question only appears on a SUNY ballot once every four years, and at CUNY, never at all, unless concerned students first collect thousands of signatures well in advance of the election. This is not unreasonably difficult, provided that one is not being relentlessly followed by mobs of salaried "protesters" scaring away every student one tries to speak to.

Such was the experience of students at Hunter College, Brooklyn College, New York City Technical College and the College of Staten Island. The corporation that has always credited itself for empowering students and getting them involved in the democratic process could not stand by and let students vote on how to spend their own activity money.

Ballot Bullies for the Environment

NYC Technical student Rodwan Khalifa was collecting signatures when a NYPIRG worker grabbed him from behind and a second one tore the

petition from his hands. Similar referendum-snatching attempts were reported later on the same campus.

More violence erupted at Tech the next day in the office of the *New Tech Times*: a NYPIRG worker was seen to pull a punch on editor Fred Sahakian, stopping only when realizing the act was being witnessed by the Director of Student Activities Sandra Scrivener. The worker, who would identify himself to *Spheric* only as "Noel" is of a type known as a "bodysnatcher": a professional non-student campaigner skilled at interfering in student democracy. The very same posse of "bodysnatchers", including "Noel", have been seen harassing students on all four campuses, occasionally in the attendance of NYPIRG volunteer students. Some of these students were NYPIRG interns—earning full-time college credit for meddling in student democracy!

"Noel" denied attempting assaulting Sahaklan, but admitted that he had been shadowing Sahaklan throughout the day of the incident. He claimed that when he had followed the editor to a water fountain. Sahaklan suddenly turned and spat water at him. "Noel" admitted he had then pursued Sahaklan to his office, but only to "warn" him. "Look at me," "Noel" told *Spheric*. "Do I look like if I had thrown a punch at him, I would have missed?" Just then in his narrative, "Noel" was interrupted by another "bodysnatcher", who ordered him not to speak on the record to this reporter. (This woman refused to identify herself but has since been identified as NYPIRG Regional Director Valerie "Dartboard" Nash.)

"Bodysnatcher" activity reported from other campuses were less violent, but the shadowing and intimidation tactics were the same. The strategy was simple and effective. Every time an activist student tried speaking to another student, the NYPIRGers would jump in, stuff propaganda in the confused students' hands, rabidly urge them not to sign the petition and generally make them feel uncomfortable and wanting only to get away.

To make sure students could not speak comfortably with their fellows, the corporation tried to identify every student involved in the campaigns, stake out the campuses for them, and upon seeing them, follow them everywhere, on and off campus. "Bodysnatchers" waited outside the newspapers and government offices where students congregated. Many campaigners broke under the stress and gave up.

A campaigning Brooklyn College student was followed onto the subway and back to the campus again. One "bodysnatcher" was stupid enough to follow student Charles De Rosa all the way to the nearest police precinct, where De Rosa asked to have harassment charges filed. "The clerk asked me, 'And who is this person you say is following you everywhere?'" De Rosa told *Spheric*. "I said, 'This guy right here!'"

College administrators refused to get involved, leaving campus security without authority to act when their orders were ignored.

Cloak and Dagger

The student government-backed referendum campaign at the College of Staten Island (CSI) was inspired by the exposure of the "PIRGgate Dossier" or

"CSI Transition Memo", which documented the espionage-style operations of NYPIRG at that college. Staten Island NYPIRG Project Coordinator Claude Rollo had complied extensive and at times extremely secret and personal information on various students, faculty, and administrators and written it up as an introductory manual for his successor, Ellen Kyracou.

In the 27-page document Rollo advised Kyracou to evade inquiries into NYPIRG's money and which students she should "play dumb" to. The memo also revealed that NYPIRG, Inc. had infiltrated the CUNY Student Union and was "discretely" monitoring the anti-Reynolds organization.

Many have noted NYPIRG's complete silence about the dangers facing CUNY in the form of Chancellor Reynolds. It was Reynolds who, in a closed-session meeting, did away with NYPIRG's obligation to report their expenditures to CSI's College Association. Reynolds has also refused to disclose to CSI's student government just what NYPIRG, Inc. is doing with the money of CSI students.

The Corporation's initial reaction to the revealing of the Transition Memo was to deny having ordered Rollo to compile the information, insisting that his actions were completely self-motivated. Subsequently, however, college administrators testified that they had seen similar "transition memos" written by previous Project Coordinators. NYPIRG Executive Director Jay Halfon refused to tell *Spheric* whether or not "transition memos" were a regular part of NYPIRG operations.

"It isn't a matter of whether or not I can tell you," Halton told this reporter. "It's a matter of how I'm going to answer your question. I'm a very thoughtful

guy and I'm going to have to think about that one and get back to you." He never did. Subsequent calls to NYPIRG headquarters were fruitless; Mr. Halfon was never available.

This came as no surprise; Halfon had been avoiding *Spheric's* inquiries into NYPIRG's finances and operations for over half year. A four-page exposé in the January issue of *Spheric* received no response from corporate headquarters, unless one counts the spreading of the bizarre rumor that *Spheric* is backed by a cult of Charles Manson worshippers.

No NYPIRGer less important than Valerie "Dartboard" Nash absurdly defamed *Spheric* thus in front of a huge Hunter classroom where *Spheric* staff were helping with the referendum drive. "Charles Manson was a mass murderer and these people think he's the Messiah" she shrieked, breaking the class up in laughter. The same rumor surfaced in the Brooklyn College campus, and at SUNY Stony Brook, where the reprinting of the *Spheric* articles in the Stony Brook Statesman so shocked the student government, the Senate froze NYPIRG's funding (student governments at CUNY do not have this power.)

Undercover PIRGers and Other Goofballs

At New York City Technical College, the referendum campaign was actually infiltrated by NYPIRG, Inc. Among the first people to volunteer for the referendum campaign were three men led by a man who identified himself as "Eric". They came to the office of the *New Tech Times*, where the campaign operations were centered.

According to Editor-in-Chief Pat Gay, "Eirc" told her that he and his two friends had been ripping

down NYPIRG advertisements and wanted to collect signatures for the referendum. Gay gave them five petition sheets and asked them not to rip down any more NYPIRG propaganda. She did not learn until after he had handed the sheets back in that "Eric" was a NYPIRG member, and it was not until NYPIRG called in their lawyrs that she realized what sabotage he had committed.

Tech and Brooklyn College were the only two campuses that managed to collect the requisite number of signatures despite the harassment and interference on the part of the Brooklyn College student government. It was on these campuses where CUNY students learned the limits of student democracy pitted against corporate legal sleaze. In contesting the legitimacy of the signature drives, NYPIRG employed a top Wall Street legal firm, Fried, Frank, Harris, Shrive, and Jacobson.

Once it was made clear that the Tech campaign had gotten enough signatures, NYPIRG, Inc. immediately began to cry "forgery." Their lawyers requested and received from Dean Daniel Fictum copies of all the petitions containing the students' signatures, together with a student master list. This document contains the names, signatures, phone numbers, addresses, and social security numbers of every student at NYC Technical. (NYPIRG, Inc. is already known for collecting students' social security numbers under such innocuous guises as voter registration and lecture attendance list taking. Social security numbers can easily be used to gain access to all one's records, from police records to credit history.)

Students began receiving strange phone calls. One students was called at 10 p.m., was told her name was on a legal document and that she could get in trouble for it. The caller told her to come to the NYPIRG office.

On April 20, NYPIRG filed an appeal that the petition drive be overruled and the question barred from the ballot on the basis of "most if not all" of the signatures being forgeries. In the complaint they filed, most of the "examples" cited were from page #2—a page "Eric" had handled!

Free Speech and NYPIRG Don't Mix

The next day a public forum was held for the student election candidates to present themselves and answer students' questions. Referendum petitioners were promised they could ask questions concerning NYPIRG after the candidates' speeches, but not before. The campaigners waited patiently through the politicos' drivel for the question and answer period, while "bodysnatchers", including Valerie "Dartboard" Nash paced nervously in the area. At the end of the speeches, the moderator announced that the assembled students could ask the candidates any question they liked provided on any subject except NYPIRG, Inc., as the question of the referendum was "unresolved."

The smell of riot began to waft through the air as students chanted, "First Amendment! First Amendment!" One student took the microphone and asked a NYPIRG official in the area how much of the $42,000 NYPIRG collects yearly from NYC Tech is actually spent on the campus. The microphone was turned off. After students began an angry chant of "Let him speak! "Let him speak!" the microphone

was turned on again, but his question remained unanswered.

A second anti-NYPIRG student took the microphone and began to make a statement about the referendum. Again the microphone was turned off and security guards suddenly appeared. Students called on the guards to check IDs to distinguish those who had legitimate reason to attend the student election forum from the outsiders. For a minute frightened "bodysnatchers" confronted students chanting "ID! ID!" and holding their own CUNY IDs aloft. The forum was declared closed and security asked everyone to clear the area.

The matter of the referendum signatures was to be settled by the Student Election Review Committee (SERC). At a meeting, each side was given two minutes to testify. Throughout the proceedings Fred Sahaklan held up a sign reading "Let the students decide", a silent reminder that the referendum was after all only a chance to allow students to vote on an issue concerning their own money. NYPIRG with their late-night phone calling had managed to drum up a handful of "witnesses" to testify their signatures had been forged; a couple of them were recognized by the campaigners who had personally asked for and received their signatures!

Pat Gay had already testified about NYPIRG's infiltration of the campaign when "Eric" himself suddenly showed up. "That's him!" she yelled. Valerie "Dartboard" Nash yelled "get out of here!" and "Eric" turned and bolted.

In the end the SERC committee, whose members included both students opposed to and supportive of NYPIRG, Inc., waived their right to judge on the

referendum issue. They passed the buck to the college president, who passed it down to Student Affairs. It was Dean Alisier Quinones who finally announced that the referendum had been overruled. Furthermore, the college had decided that to prevent future controversy, it would begin drafting new stringent rules governing the referendum process at Tech. Last we heard, the college was receiving advice on this matter from—you guessed it! NYPIRG, Inc.

Pay Gay sees the administration as trying to cover for Daniel Fictum. "Everybody knows it was wrong for Daniel Fictum to hand over the master list to NYPIRG. They don't even want to discuss it."

Vote for NYPIRG

NYPIRG also took sides and ran candidates in the student elections. At Tech NYPIRG backed Presidential candidate Maximo Xavier, who won the election. At Hunter College, where NYPIRG, Inc. had made no inroads in student government in recent years, NYPIRG members and supporters took a newfound interest in politics and were elected to the Day Session Student Government on the ESP slate. At the College of Staten Island NYPIRG ran several candidates for student government in a blatant attempt to drive out their opponents in the current administration NYPIRG, Inc. now has members on CSI's College Association—the final authority on student activity fee expenditures. Talk about the fox guarding the henhouse!

Given the impeccable honesty and scrupulousness of CUNY officials, one would think someone would question the involvement in student politics of a politically motivated corporation with millions of untraceble dollars at their disposal, but no

administrator at any CUNY has protested NYPIRG's participation in student politics.

Another undiscussed issue is the spending of student activity fee money on campaigning, a violation of election codes at every college. For instance, 1993's Evening Session Student Government election at Hunter College was declared invalid because the Day Government was found to be picking up the tabs for the candidate's xeroxes. Yet no one can say whether or not any of the $914 thousand dollar NYPIRG, Inc. collects yearly from college campuses was spent on the deluge of propaganda printed just to combat the referendum campaigns, let alone the salaries of the "bodysnatchers."

Given NYPIRG's lack of ethics in achieving their goals and the abundance of invisible funds at their disposal, the question to ask is not whether or not student governments have been bought by NYPIRG, Inc. by why it doesn't happen all the time. One student government that has long shown all the earmarks of being NYPIRG property is the day session government of Brooklyn College. This year that government did all it could to make things difficult for the campaigners had gotten the signatures, peremptorily overruled the petition and kept their constituents from voting on the question.

Regulations unknown on other CUNY campuses forced the Brooklyn College campaigners to get all their signatures within a few weeks. They had to use sheets individually approved and supplied by the student government, who delayed the release of the petitions and made up new, arbitrary "procedures" to further delay the process.

When the signatures were in, NYPIRG lawyers persuaded the lay advocate to declare the wording of the referendum question "deceptive and inaccurate" because it proposed that NYPIRG's $3.00 fee be cut in half, without specifying that this would lower the student activity fee by $1.50. The question, which was modeled word-for-word on a similar referendum approved by the CUNY Board of Trustees, had been approved at the beginning of the campaign by the CLAS election commission.

NYPIRG took the advocate's opinion to the Student Election Review Committee, asking that the referendum be thrown out. The SERC committee was composed of student government members and its chairman Shannon Seier, is a prominent member of NYPIRG.

A SERC official promised anti-NYPIRG student Simone Cowan that both sides would get to present their cases to SERC in a back-and-forth way. As things turned out, only the lay advocate and NYPIRG were granted an audience with SERC; the anti-NYPIRG campaigners were not. SERC made its decision in closed session and did not even make the decision known until the campaigners had protested to President Vernon Lattin that the election was quickly approaching with the referendum question still unresolved. SERC's decision was stated in a brief note: the referendum was to be overturned "for the reasons stated in the lay advocate's memo."

Appeals and protests were officially dismissed by Vice-President Larry Gold, who accepted Shannon Seier's account of SERC's proceedings. Official minutes were never produced. Gold declared that SERC had operated in a fair and proper manner,

without explaining how he could possibly have come to that notion.

In a statement to *Spheric*, Simone Cowan says, "I guess now we really know why NYPIRG spends most of the $60,000 it takes from Brooklyn College on paid staff: so that slick lawyers can con a few college administrators and students on election committees into robbing BC students of the chance to vote on a clearly-worded question about NYPIRG."

Cowan noted that this year's actions were only a repeat of NYPIRG's crushing of a similar campaign at Brooklyn College in 1989: "NYPIRG lawyers got the student review board to overturn the vote on the dubious grounds that one student had voted twice and the claim of a few NYPIRG supporters that the polls had closed five minutes early. So NYPIRG's stifling of the student vote this year is just one more proof that you should look at what NYPIRG really is and not be fooled by what they want you to think they are."

[PICTURES AND CAPTIONS OMITTED]

BROOKLYN COLLEGE KINGSMAN
5/9/86 P. 1 – P. 3

Anti-NYPIRG petitioner Charges harassment in campaign

By BRUCE MEYERSON

A BC student petitioning for an election referendum to defend the New York Public Interest Research Group (NYPIRG) on campus has charged employees of the organization with harassment and attempted theft.

The student, Howard Stier, said that NYPIRG workers had tailed him all week as he campaigned to students to sign his petition, harassing him when he tried to speak, and stealing a copy of the petition from table his "student's rights" group was stationed at.

To place a referendum on the ballot for next week's student election, a petition must be drawn up and submitted with the signatures of 730 CLAS students (approximately ten percent of the CLAS student body) by 12: 15 p.m. on Friday, May 9.

The petition being circulated by Stier's group states that, "NYPIRG should not be allowed to collect a mandatory three dollar fee which as included in the student activity fee."

According to Stier, the purpose of the referendum is "to stop the abuse of student rights that NYPIRG engages in by forcing everyone to pay."

"This fee is unconstitutional," said Stier. "The First Amendment guarantees freedom of association

and prohibits being forced to associate with an organization they don't necessarily agree with."

Paul Peloquin, a NYPIRG Project Coordinator who Stier says has been following him everywhere including the bathroom, said that he has only been trying to "inform people so they know what they are signing" with so many petitions being circulated on campus last week.

"Some people just sign petitions without knowing what they are signing," said Peloquin. "Basically were trying to inform people so they can make an informed decision."

"I think its being oversensitive," he added.

According to Stier, the trouble began on Monday when NYPIRG members and workers started "harassing" the petitioners by "starting arguments and throwing flyers in their faces" as they campaigned to students for signatures.

"They'd come over staying 'Stop, don't sign,'" he said.

After complaining to Archie MacGregor, Associate Dean for Students, Stier said that the NYPIRG workers were told by the dean to "stay reasonable distance from the petitioners."

Later that day, Stier said that a "fellow" passed by a table set up by his group to collect signatures and took a petition and walked away with it. The man was told that the petition was not for public distribution and was asked to return it, Stier said. The petition did not contain any signatures.

"The guy put it in his pocket and said he had a right to take it," Stier said. When he explained to the man that the sheets on the table were stamped with

a seal designating them as Student Government property and the man continued to walk away. Stier explained he "held him up against the fence and called for security assistance."

"A security officer came out of Gershwin and he tried to get away, but they held him," Stier said. "The police came and then found the petition in his back pocket," The petition was returned, Stier said.

The man, David Fliesher, is a NYPIRG lawyer ordinarily not assigned to the BC campus. According to Fleisher, he found "a stack of blank petitions and read it. I saw that it was something NYPIRG (would be interested in)."

I walked a couple steps and this person came screaming at me. He was really upset," said Fliesher.

"I introduced myself, but he didn't seem to be interested in a conversation," Fleisher continued. "He just wanted to scream at me. He started pushing and shoving me."

Fleisher said that when he didn't respond, Stier "got into a boxers crouch like he wanted to fight."

When he tried to walk away, Fleisher said that Stier would not let him and kept pushing as shoving him.

"I didn't want any difficulty," said Fleisher. "He threatened to hit and hurt me and then grabbed me and screamed for security."

After security came, Fleisher said, they were both taken to Macgregor who he said told them, "the whole thing was frivolous."

Fleisher said that he had no intention of harassing Stier and that he has only wanted to make

sure that people heard the facts since he said some of the information Stier was giving out was "grossly inaccurate."

Following that incident, Stier said, NYPIRG workers began to tail him.

"They began surveillance of every move I made," he said, "they began to hound me."

Stier said they also told him they were going to "make things hard for me." He was then followed, be said, by Peloquin to the Lay Advocate office, where he went seeking advice about Peloquin's persistence, and then to Vice President for Academic Affairs, Hilary Gold's office, where he went to complain to Gold about Peloquin.

Stier said that Gold was "amazed" and went with him outside the office where they saw Peloquin standing. According to Stier, Gold then approached Peloquin and spoke to him.

Gold could not be reached for comment.

Stier said that he then spoke to MacGregor, who told him that, "the harassment would stop.

MacGreaor said that he had "telephoned Mr. Peloquin and expressed the indignation of the collage administration that Brooklyn College students should sense that they are being intimidated in any way, particularly by individual who – although that person would be welcome to the campus in other circumstances – are not members of the immediate college community."

"My understanding of quality and class and good sportsmanship is not to have someone gathering signatures to have someone next to him making that process difficult," MacGregor said. "People who don't

want me to sign a clipboard . . . (have) enough ways for them to express their own views so that there is no necessity to interfere directly with other students."

While he said that the administration is not siding with any of the individuals involved, he said that the incident with Fleisher, responded to him by Edward Hajjar, Assistant Director of security, "appears to corroborate Mr. Stier's complaint."

"I have an open mind," he said. "But when an independent, arms length college employee who has no particular ax to grind reports that something is wrong, we're going to give it dose and serious attention."

Immediately after speaking with MacGregor, Stier said that he went to lie down on the campus with friends and Peloquin sat down next to him.

"He said he had the right to talk and go wherever I go," Stier said.

"He even followed me to the toilet," Stier said. "Security said that seemed a bit flaky." Stier added that Peloquin said, "It's about time you went here. I have to go.'"

Concerning what he called the "bathroom incident," Peloquin said, "I really had to go (to the bathroom). I think he's really being oversensitive." Peloquin said that afterwards he lost Stier anyway.

Stier said that he had secured enough signatures to get the referendum on the ballot and that he had reached many students who were unaware that NYPIRG exists and that they pay to fund it.

Friend Or Foe?

By DEBBIE SECKULAR

News Editor

A list of administrators, faculty and students who were either tagged "friendly" or "enemies" has surfaced in the New York Public Interest Group (NYPIRG) the College of Staten Island (CSI) division, according to the Staten Island local newspaper, *The Advance.*

The list was allegedly passed from the project coordinator Clause Rolo as an "advice memo" to his replacement, Ellen Kyracou, the Advance stated.

According to the article, the memo, called CSI Transition Memorandum, details political affiliations, notes on who is dating who, medical histories and opinions on who should and shouldn't be trusted.

The memo set off a wave of indignation with the CSI student government which passed a string of resolutions in an attempt to break the sixteen year affiliation between the non-profit advocacy group and the school, the article stated.

Brooklyn College's chapter of NYPIRG could not be reached for comment.

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JAN. 1994 SPHERIC p. 3—Reprint from College Staten Island Voice

PIRGate Dossier Exposed

NYPIRG, Inc. is not above espionage and infiltration of student groups.

by D.R. O'Connell

An internal memorandum from the office the New York Public Interest Research Group, Inc. (NYPIRG) at the College of Staten Island has led to the passage of several retaliatory measures by the CSI Student Government.

Entitled CSI Transitory Memo, the twenty-seven page report on "the friends and enemies of NYPIRG," was presented to the Government on October 7th by Student Senator Tom Taaffe. The memorandum, which contains personal and political information on Student Leaders, Administration, Faulty, Staff, and organizations throughout the school, was written by former NYPIRG, Inc. Project Coordinator Claude Rolo, as an introductory text for his successor, Ellen Kyracon.

Taaffe, Publications Commissioner, proposed seven motions calling for action to be taken against the Manhattan based lobby group. "I want this (memo) published," he said. "I want every student on the campus to read this . . .in toto."

Many Student Senators were concerned that intimate details of people's private lives were mentioned in the report, including the home lives and personal relationships of some student leaders.

"It's not that bad if they publish our politics, but when they go into our personal lives, it's a disgrace," said Ryan Monroe, who was noted in the report as

the "loudest and most visible member of Student Government."

"It's not just stuff about Student Government," said Finance Commissioner Jessica Rebak. "They put stuff about professors in here, and various administrators: Dean Jackson, Dean Torre, Allan (DiBase, Director of Student Services,) (some of the notations said) complimentary things, but a lot of them aren't, and a lot of them delve into areas where they have no business. I am very upset about this memo, they said a lot of nice things about me, but . . .I don't care, they have no right to invade our privacy like this."

A motion to publish the memo twice was passed unanimously. It would be published immediately upon approval of those mentioned in the report and again at the end of the academic year. Nothing that a person named in the report found objectionable would be printed. Student Government would allocate funds for such publication.

Taaffe's second mention called for a referendum to ". . .kick NYPIRG, Inc. off the campus at the earliest possible moment." This motion was passed unanimously, sidestepping a counter proposal by SG Vice President Cliff Peterson to block student funding of NYPIRG, Inc.

The student government also unanimously passed motions to recommend that NYPIRG, Inc. be removed from its office, that all Student Government services be denied the organization, that other CUNY campuses and media be informed about the existence of the memo, and that Student Government demand that NYPIRG, Inc. provide them with a copy of its budget within ten working days.

Student Senator Sammy Kafah arrived at the meeting during discussion of the seventh motion, which proposed that SG look into the feasibility of initiating a lawsuit against NYPIRG, Inc. Kafah, one of NYPIRG Inc.'s three board representatives, abstained from the motion as did three other senators. Kafah denied knowledge of the memo's existence.

Taaffe noted that "(the memo) recommended that NYPIRG, Inc. discreetly infiltrate the CUNY Student Union (CSU), so that they could keep tabs on the activities of the CSU, lest the CSU turn out to have a political agenda at odds with NYPIRG, Inc."

Student Senators expressed shock and outrage over the memo and its contents.

"Frankly, NYPIRG, Inc. is student supported and it shouldn't have tabs on us, and we shouldn't be allies or non allies . . .especially under student funding," said SG President Nanci Richards, a founder of the CSI chapter of the CSU.

Meri Kaufman, Student Services Commissioner, noted that a NYPIRG, Inc. representative addressing her sociology class ". . .got terribly violent when she asked where NYPIRG, Inc.'s money went."

In commenting upon remarks made about him in the memo, Taaffe said "Last year, I was not necessarily opposed to NYPIRG, Inc., I simply wanted to see the money better allocated on the campus, and I wanted to see where their money went. Apparently this has made me an enemy of theirs." Taaffe, Peterson, and Monroe had requested a copy of NYPIRG, Inc.'s budget last fall.

Story and photo courtesy *CSI Voice*

[STONY BROOK STATESMAN p. 4 3/28/96]

Editorial

Now That It's Over. . .

Well, Stony Brook, you've made it. Two long days of flyering, electioneering, and otherwise annoying behavior which accompanies the Polity Elections has finally come to an end. Now all that remains is for the votes to be tallied and the results announced.

You survived the nigh endless barrage of campaign staffers screaming out "Vote for (insert virtually unopposed candidate's name here)". You persevered over the legions of NYPIRG fanatics shoving statistics down your throat and flyers into your hands. You turned away wave after wave of other referenda campaigners as they repeatedly asked the same tired question: "Did you vote?"

So. . .did you?

It was a simple process, really—five minutes of your time. Not only could you have helped to make a difference in your life here at Stony Brook, but voting would have allowed you to reject those annoying handbillers with a "Yes! I voted already! Leave me, alone you (insert degrading expletive here)!" and a smile.

However there are a few things that come into question about these particular elections. First and foremost is the lack of privacy in voting. Every voter should be allowed to place their ballot in a ballot box personally. The pollwatcher should have absolutely no control over where *your* ballot goes after it leaves your hands.

Also on the subject of privacy are the campaigners: specifically, those from NYPIRG.

While the Election Board Bylaws specifically state that electioneering in close proximity to a polling table is forbidden, no such rule exists for referenda items. This means people campaigning on behalf of these organizations could essentially do whatever they wanted to in order to get your vote.

NYPIRG used—and in many students' opinion, abused—this situation. Their campaign staffers walked with students all the way to the polling table in the Union. All the while, they extolled their virtues, giving students the short list (which didn't seem so short if it was you listening to it) of incredible things that NYPIRG has done. This isn't necessarily a bad thing—if migraines are your idea of a *good* thing.

Another concern on our part is the polling site setup. Why is it stated in the Election Board Bylaws that "For the Fall, Spring and any other general campus-wide elections, there shall be 6 polling stations on the first day and 3 polling stations on the second day. . . ." when there were more polling sites open on both days?

Sites were listed at both HSC and the Sports Complex on posters advertising the elections. These are not listed in the Bylaws. While this really isn't of vital concern—HSC students are just as much a part of this school as anyone, and deserve a polling site near them—conceivably, someone could use this lack of advertising to their advantage. By concentrating efforts in these lesser known areas, they could gain an edge on others who aren't aware of these sites. In the same context, while polling sites at Benedict, Roth, and Kelly Cafeteria, were advertised to be open on Tuesday only they were open both days.

Finally, there is the ID check. Several of our staff members were not asked for their ID when they went to vote. This is of serious concern. If someone was not asked for an ID, they could use someone else's name and ID to cast an extra vote, only using their own name if asked for one.

Other than that, it seemed like an uneventful election season—no impeachments, mudslinging, or other major catastrophes. Who knows? Polity may make a change for the better. Nah, who are we kidding.

KINGSMAN

PROVIDING A VOICE FOR BROOKLYN COLLEGE STUDENTS SINCE 1950

SPECIAL CLAS ELECTION PULLOUT • MAY 9, 1994

No Anti-NYPIRG at CSI

By RUDI SELLERS

Staff Writer

The College of Staten Island's anti-NYPIRG referendum did not appear on their election ballot this week because the group rallying to reduce NYPIRG to club status by cutting funding failed to get enough signatures on petitions, said a CSI Student Government member.

This is just one of the reasons attempts to curb NYPIRG's funding and power have been thwarted throughout CUNY (at Brooklyn College incorrect wording led to the movements demise).

Joe Nicolosi, the Student Government graduate chairperson at CSI said NYPIRG's is successful in beating referendums for many reasons.

Nicolosi cited NYPIRG's involvement in environmental issues.

"Today it (the environment) is a hot issue." Nicolosi said. "We knew we couldn't remove them from the campus."

Like many oponents of NYPIRG Nicolosi proposed cutting funding and diverting the cash flow to the library and the student center saying "Let's keep the money here"

"They've become their own worst enemy" said Nicolosi "They were using balloons and creating noise pollution."

He also attributed NYPIRG's success to their strong presence on campus "NYPIRG brought in some people to harass (people)," said Nicolosi.

When explaining why he thought the movement was defeated and only 967 of the necessary 1,200 signatures were collected to put the movement on the ballot, Nicolosi cited the swarm of flyers NYPIRG distributed.

"NYPIRG plastered every seat and car in the college," Nicolosi said. While collecting signatures Nicolosi said he only encountered one person out of 40 that refused to sign the petition.

In response to the continued NYPIRG presence on campus for at least another year Nicolosi said, "They'd better tune up their act."

A main concern was NYPIRG's spending, Nicolosi, like other anti-NYPIRG activists, wanted to freeze their funds and investigate NYPIG's spending. As a club member that is required to show records of spending, Nicolosi said NYPIRG should have to show their records as well.

"Why should they (NYPIRG) have such freedom, and we (student clubs) be scrutinized."

Nicolosi likened NYPIRG to a cult.

"They're not that extreme but they're just as bad, and they lie," he said.

APPENDIX II

At I.A.S. Part 26 of the Supreme Court of the State of New York, held in and for the County of Kings at the Courthouse, located at 15 Willoughby Street, Borough of Brooklyn, City and State of New York, on the 27th day of August, 1996.

PRESENT:

HON. MELVIN S. BARASCH

Justice

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PATRICK LEAHEY, KIT LEUNG, BIK LAM LAM, OLIVIA ALMENGOR and YAFFA GRINBLATT,

Petitioners,

For an Order pursuant to Article 3001 of the Civil Procedure Law and Rules and Article 78 of the Civil practice Law and Rules,

-against-

THE CITY UNIVERSITY OF NEW YORK, BROOKLYN COLLEGE, VERNON LATTIN, in his capacity as president of Brooklyn College and HILARY GOLD, in his capacity

DECISION AND ORDER

INDEX # 15919/96

as Vice-president of Brooklyn
College,

Respondents.

----------x

By way of the instant Article 78 proceeding, petitioners pro se, who all claim to be full-time students at Brooklyn College and members of an organization known as Students for Advocacy Group Accountability ("SAGA"), seek to overturn a determination by the administration of Brooklyn College. That determination, made by Respondents on May 9, 1996, permitted the holding of a student government election in May, 1996 without a SAGA-sponsored ballot referendum seeking the elimination of a $3.00 New York Public Interest Research Group, Inc. ("NYPIRG") fee. In furtherance of this ballot initiative which was sought for the May, 1996 elections, SAGA, in accordance with the provisions of Section 16.12 of the By-laws of CUNY, purportedly obtained 2200 signatures on a petition calling for that referendum. Respondent does not challenge the existence, sufficiency, or validity of these signatures.

Elections at Brooklyn College are administered by the College Wide Election Review Committee ("CWERC"), a group of students sanctioned by the administration of Brooklyn College. It is claimed that Respondents arbitrarily and capriciously violated the afore-mentioned provision of the by-laws by postponing the vote on this question until the fall semester of the 1996-97 academic year. Petitioners seek that the Court require that Respondents hold the Fall, 1996 referendum in early December, 1996, under the same rules, terms and conditions as

applied to the Spring 1996 referendum, and that the rules established by Brooklyn College with respect to campaigning and electioneering for the Spring, 1996 referendum be enforced with respect to the Fall, 1996 referendum.

Petitioners contend that at a meeting of CWERC on April 8, 1996, CWERC approved the wording of the NYPIRG referendum. This is disputed by Respondents, which represent that a quorum was lacking at the time, and that although all four members who were present and agreed to accept the recommendation that CWERC accept and authorize the language of the recently-submitted NYPIRG referendum, the meeting was unofficial due to the lack of a quorum.

In fact, this representation is supported only by a copy of a memorandum issued by the Brooklyn College Student Center to Michael Solomon of CUNY Legal which purported co summarize the discussions had therein. Respondents claim that no minutes of this meeting were recorded, and counsel has not provided an affidavit by any person with first-hand knowledge. While the Court will accept the representation of the Attorney General on this issue, it does so reluctantly and in recognition of its role as an officer of the Court.

However, while the vote taken by CWERC at its duly constituted meeting of May 6, 1996, which deferred the holding of all referenda for special elections to September, 1996 may have accorded with CWERC'S parliamentary rules, it failed to comply with the provisions of CUNY'S own by-laws. Section 16.12 and 16.12 (c) provide, respectively, that "A referendum proposing changes in the student activity

fee shall be initiated by a petition of at least ten (10) percent of the appropriate student body and voted upon in conjunction with student government elections", and "at the initiation of a petition of at least ten (10) percent of the appropriate student body, the college president may schedule a student referendum at a convenient time other than in conjunction with student government elections." (emphasis provided). The record is devoid of any indication that the rescheduling of the NYPIRG referendum was initiated by the student body, as was explicitly and unambiguously mandated by the By-laws.

Regrettably, this latter point, while indicative of bad faith on the part of Respondent, cannot be relied upon at this time to totally cure an issue which is now moot. Another Justice of this Court, who signed the Order to Show Cause on May 10, 1996, declined to grant petitioner's request for a Temporary Restraining Order staying the holding of student government elections until the hearing of this motion. This Court did not hear argument on the motion until July 11, 1996, after issue was joined and well after the elections were held in May.

However, while the Court clearly lacks the power to determine "academic, hypothetical, moot or otherwise abstract questions" (Matter of Hearst Corp. v. Clyne, 50 NY2d 707, 713), it is not obligated to turn a blind eye toward Respondents' arbitrary and wilful disregard of their own rules and their unilateral effort to schedule the referendum in early September, at the commencement of the academic year. Thus, in order to permit both proponents and opponents of the measure a meaningful opportunity

to educate the entire 1996-97 student body regarding the issues involved, the Court grants the petition to the extent of ordering Respondent to hold SAGA'S referendum over a three-day period commencing October 28, 1996 under the same rules, terms and conditions, and based upon the same petition signatures previously submitted, as would have applied to the referendum had it been held in May, 1996. The application for costs and retention of jurisdiction is denied.

The foregoing constitutes the decision and order of the Court.

ENTER

MELVIN S. BARASCH

J.S.C.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

AMY CAI, personally and in her capacity as Treasurer of Students for Advocacy Group Accountability and MIRIAM EHRMAN, personally and in her capacity as a member of Students for Advocacy Group Accountability,

Plaintiffs,

-against-

BROOKLYN COLLEGE, VERNON LATTIN, in his capacity as President of Brooklyn College and HILARY GOLD, in his capacity as Vice-President for Student Life at Brooklyn College,

Defendants.

----------X

ORDER
Case No. 98-CV-2736 (FB)

BLOCK, District Judge:

The Court having considered plaintiffs' Order to Show Cause dated April 13, 1998, the Complaint dated April 3, 1998 and exhibits thereto, the Declaration of Gary P. Weinstein dated April 16, 1998 and exhibits thereto, and defendants' Memorandum of Law in Opposition to Plaintiffs' Motion for a Preliminary Injunction, and the parties

having come before the Court on April 16, 1998 and April 17,1998,

Now, therefore, it is hereby

ORDERED that the Election Commission of the College of Liberal Arts and Sciences ("CLAS Election Commission") at defendant Brooklyn College shall make available 100 petitions for Students for Advocacy Group Accountability ("SAGA") at the CLAS Election Commission's offices no later than 2 PM on Monday, April 20, 1998; and it is further

ORDERED that SAGA shall have from April 20, 1998 until May 4, 1998 at 2 PM to gather signatures in order to place their proposed referendum question regarding the earmarking of student activity funds for the New York Public Interest Research Group, Inc. on the ballot for the student government elections scheduled to take place on May 11, May 12, and May 13, 1998; and it is further

ORDERED that the Court shall have continuing jurisdiction over this controversy, and plaintiffs are hereby directed to contact the Court's deputy Michael J. Innelli at (718) 260-2405 or Catherine A. Rinaldi at (718) 260-2422 in the event that defendants or any agencies, organizations or entities having responsibility over the balloting and election issues raised in the Complaint, including, but not limited to, the CLAS Election Commission and the College Wide Election Review Commission, fail to comply with the terms and conditions of this Order; and it is further

ORDERED that plaintiffs shall have judgment against defendants in the amount of $150.00, which represents the filing fee paid by plaintiffs in this matter.

SO ORDERED.

Dated: Brooklyn, New York
April 17, 1998

/s/
FREDERIC BLOCK
United States District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

IRENE KOKOTAS and KATHERINA SINGH, personally and in their capacity as members of the Brooklyn College student body,

Plaintiff,

-against-

BROOKLYN COLLEGE, CHRISTOPH KIMMICH, in his capacity as President of Brooklyn College and MILGA MORALES, in her capacity as Dean for Student Life at Brooklyn College,

Defendants.

----------X

REPORT AND RECOMMENDATIO N

CV-01-1853
(ERK)

APPEARANCES:

IRENE KOKOTAS
2024 MILL AVENUE
BROOKLYN, NEW YORK 11234

KATHERINA SINGH
88-12 132ND STREET
QUEENS, NEW YORK 11418

ELIOT SPITZER
ATTORNEY GENERAL OF THE
STATE OF NEW YORK
BY: MICHELE N. BEIER
ASSISTANT ATTORNEY GENERAL
120 BROADWAY
NEW YORK, NEW YORK 10271

AZRACK, United States Magistrate Judge

Plaintiff's have brought this Order to Show Cause alleging violations of the First and Fourteenth Amendments and 42 U.S.C. §1981 in the defendant's handling of their appeal of the College Student Government Elections Committee's decision. That decision forbade plaintiff's from circulating petitions supporting a referendum question regarding NYPIRG funding. This motion was filed while the plaintiff's appeal was pending within the administrative process at Brooklyn College. On March 29, 2001, four days after the instant motion was filed President Kimmich granted plaintiff's appeal giving plaintiffs their requested relief, i.e., 10 school days from March 30 to gather signatures for the April 23, 2001 election. Plaintiff's however, did not receive the President's Order until 1:45 on April 2, 2001. Thus they claim they do not have the full 10 day period available. At the April 9, 2001 conference on this matter before the undersigned, the defendants further agreed to further extend the 10 days to compensate for the late notice. Thus the plaintiff will have the full 10 days requested running from April 2 at 12:45 to April 23, at 12:45. Thus the

injunctive relief sought has been granted and the motion is moot. Defendant will answer the complaint and address the issue of costs for the motion by April 27, 2001.

SO ORDERED

Dated: Brooklyn, New York
April 10, 2001

/s/
JOAHM AZRACK
UNITED STATES MAGISTRATE JUDGE

APPENDIX JJ

Brooklyn College	From Departments of Geology & Physics	Press Release
For Release:		Contact Person:
February 24, 1997	revised 4/4/97	Professor David Seidemann (718) 951-5425

Fifty-nine City University Scientists Cite the New York Public Interest Research Group (NYPIRG) for Engaging in Research Misconduct

In a statement released today, fifty-nine scientists at the City University of New York (CUNY) indicate that sufficient evidence exists to demonstrate that an influential environmental/consumer group, the New York Public Interest Group (NYPIRG), has engaged in scientific research misconduct. In consequence, the scientists state that NYPIRG has failed to fulfill its purpose at CUNY (i.e., researching issues of interest to students).

The CUNY scientists, including the Chairpersons of five departments, the Executive Officers of three graduate programs, and four Distinguished Professors, call for an investigation by an independent panel of experts. Upon confirmation that NYPIRG research does not meet accepted minimum standards, the scientists ask that the CUNY Board of Trustees end NYPIRG's special status on CUNY campuses, including its right to

raise funds through student activity fees. (NYPIRG maintains offices on CUNY campuses, teaches classes, supervises educational projects, and receives a yearly allocation of roughly $470,000 from student fees.)

Prior to signing the statement, the CUNY scientists were presented with evidence that included data from NYPIRG reports, communications from NYPIRG to the editors of scholarly journals, and the published comments of NYPIRG officials. The documents demonstrate that NYPIRG fabricated conclusions and falsified data in its research and that the group attempted to hide its research misconduct through the use of practices that are contrary to a university's mission of fostering open and honest debate. (These practices include the use of false statements and personal attacks and a legal threat made to a scientific journal.)

Evidence for the harmful effects of NYPIRG's misconduct on news coverage, public policy decisions, and education were also considered by the scientists.

Among the more serious violations found in NYPIRG research were:

- a fabricated conclusion about the effectiveness of the Scholas Aptitude Test (SAT): NYPIRG selected only those data which agree, with its conclusion and ignored the rest, a practice which constitute research fraud, as defined by the National Academy of Sciences;

- falsified data in a study of New York City's recycling capacity;

- a fabricated conclusion about the cause of accidents in the Audi 50 automobile. (NYPIRG

derived that conclusion by misreporting its own data.)

Other examples of unacceptable research practices were found in NYPIRG reports on the hazards of New York City landfills.

The statement signed by the scientists at CUNY and a list of the signatories follows. Fifty-nine Professors in science departments at CUNY signed the statement, as did three Adjunct Lecturers.

> **Sufficient evidence exists to demonstrate that the New York Public Interest Research Group (NYPIRG) engages in unacceptable research practices, including those that rise to the level of misconduct as defined by the National Academy of Sciences. NYPIRG has therefore failed to fulfill its purpose on CUNY campuses, as defined by the CUNY Board of Trustees. We ask that an independent panel of experts in research convened to evaluate the evidence related to NYPIRG research. If it confirmed that NYPIRG research does not meet accepted minimum standards, we ask that the CUNY Board of Trustees end NYPIRG special status on CUNY campuses, including its right to raise funds through the student activity fee.**

Name	Title	Department	College
John A. Chamberlain	Chairperson/ Professor	Geology	Brooklyn
Norman Indictor	Chairperson/ Professor	Chemistry	Brooklyn
Peter Lesser	Chairperson/ Professor	Physics	Brooklyn

Allan Ludman	Chairperson/ Professor	Geology	Queens
Margaret Winslow	Chairperson/ Professor	Earth & Atmospheric Sciences	City
Richard Prizer	Executive Officer/ Professor	Chemistry	CUNY
Frederick Shaw	Executive Officer/ Professor	Geology	CUNY
Horst Schulz	Executive Officer/ Professor	Biochemistry/ Biology	CUNY
Gerald M. Friedman	Distinguished Professor	Geology	Brooklyn
Fred Pollak	Distinguished Professor	Physics	Brooklyn
Martin Schreibman	Distinguished Professor	Biology	Brooklyn
Carl Shakin	Distinguished Professor	Physics	Brooklyn
Stephen Cottrell	Professor	Biology	Brooklyn
Ronald Eckhardt	Professor	Biology	Brooklyn
Charlene Forest	Associate Professor	Biology	Brooklyn
David Franz	Professor	Biology	Brooklyn
Paul Maderson	Professor	Biology	Brooklyn
Melvyn Selsky	Professor Emeritus	Biology	Brooklyn
David Smouse	Assistant Professor	Biology	Brooklyn

	(95/96)		
Seymour Aronson	Professor	Chemistry	Brooklyn
Lesley Davenport	Associate Professor	Chemistry	Brooklyn
David E. Goldberg	Professor	Chemistry	Brooklyn
Paul Haberfield	Professor	Chemistry	Brooklyn
James Howell	Professor	Chemistry	Brooklyn
Daryl Howery	Professor	Chemistry	Brooklyn
Gary Mennitt	Professor	Chemistry	Brooklyn
George Moriber	Professor	Chemistry	Brooklyn
Avigdor Ronn	Professor	Chemistry	Brooklyn
Daniel Vellom	Assistant Professor	Chemistry	Brooklyn
Robert Tripp	Associate Professor	Chemistry	Brooklyn
Herman Zieger	Professor	Chemistry	Brooklyn
Pat Sterbenz	Professor	Computer Science	Brooklyn
Stephen Aja	Associate Professor	Geology	Brooklyn
Nehru E. Cherukipalli	Professor	Geology	Brooklyn
William H. Harris	Professor	Geology	Brooklyn
David	Professor	Geology	Brooklyn

Leveson			
Surendra Saxena	Professor	Geology	Brooklyn
David Seidemann	Professor	Geology	Brooklyn
John Blamire	Professor	Biology	Brooklyn
John Boardman	Associate Professor	Physics	Brooklyn
Albert Bond	Associate Professor	Physics	Brooklyn
Peter Brancazio	Professor	Physics	Brooklyn
Louis Celenza	Professor	Physics	Brooklyn
Robert Fanelli	Associate Professor	Physics	Brooklyn
Victor Franco	Professor	Physics	Brooklyn
Henry Lancman	Professor	Physics	Brooklyn
Jacob Lebowitz	Associate Professor	Physics	Brooklyn
Ming-Kung Liou	Professor	Physics	Brooklyn
Lawrence Mendelsohn	Professor	Physics	Brooklyn
Ken Miyano	Associate Professor	Physics	Brooklyn
Patrick Moyer	Assistant Professor	Physics	Brooklyn
Viraht Sahni	Professor	Physics	Brooklyn
Michael I. Sobel	Professor	Physics	Brooklyn
Raymond Struzynski	Associate Professor	Physics	Brooklyn

Micha Tomkiewicz	Professor	Physics	Brooklyn
Stanley Gedzelman	Professor	Earth & Atmospheric Sciences	City
Jeff Steiner	Professor	Earth & Atmospheric Sciences	City
Robert Marino	Professor	Physics and Astronomy	Hunter
Pat Brock	Associate Professor	Geology	Queens
Thomas Liogys	Adjunct Lecturer	Geology	Queens
Billy Skordras	Adjunct Lecturer	Geology	Queens
Jorge Alvear	Adjunct Lecturer	Geology	Queens

The City University of New York

Office of the Vice Chancellor for Faculty and Staff Relations

535 East 80 Street, New York, N.Y. 10021

212/794-5353

May 18, 1997

Professor John A. Chamberlin
Chairman, Department of Geology
Brooklyn College
2900 Bedford Avenue
Brooklyn, New York 11210-2889

Dear Professor Chamberlain:

I write in response to your letter to Dr. Anne A. Paolucci, Chairwoman of the Board of Trustees. In your letter you propose that CUNY convene an independent panel of experts to investigate NYPIRG's research practices and that CUNY suspend its relationship with NYPIRG pending the outcome of the investigation.

Your first proposal stems from your allegations that NYPIRG has engaged in research misconduct. This allegation was already addressed by Dr. Anne L. Martin, Acting Vice Chancellor for Academic Affairs. In her letter to you dated November 14. 1997, Dr. Martin concluded, for a variety of reasons, that it was

not appropriate for CUNY to intervene in this matter. I discern no new facts in your letter that would warrant a review of her determination.

Your second proposal, to suspend CUNY's relationship with NYPIRG, is best addressed through the process described in Section 16.12 of the Bylaws of the Board of Trustees concerning student referenda on changes in student activity fees. I understand that a referendum on defunding NYPIRG occurred at Brooklyn College this week and the students voted to continue to fund NYPIRG.

Thank you for bringing this matter to the administration's attention.

Sincerely,

/s/

Brenda Richardson Malone
Vice Chancellor

BRM: rob

c: Chairwoman Anne A. Paolucci
Chancellor W. Ann Reynolds

No. 10-820

Supreme Court, U.S.
FILED
JAN 20 2010
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

MARISSA SCHAIN, ET AL.,

Petitioners,

v.

BENNO C. SCHMIDT, IN HIS CAPACITY AS CHAIRMAN OF THE BOARD OF TRUSTEES OF THE CITY UNIVERSITY OF NEW YORK, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF ATLANTIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

MARTIN S. KAUFMAN
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Larchmont, New York 10538
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Counsel for Amici Curiae

January 2011

QUESTION PRESENTED

Whether the Second Circuit erred in approving CUNY's notice and procedures for refund of referendum-based NYPIRG fees without requiring CUNY to include any of the safeguards mandated in the analogous labor union agency fee case law, in particular *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), which requires a the fee-collector to minimize the burden on objection, provide adequate notice, and establish an interest-bearing escrow or advanced rebate to avoid imposing an involuntary interest-free loan on dissenting students.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6, *amicus* states that it is a Pennsylvania not-for-profit corporation. It does not have shareholders, and is not the parent or subsidiary of any other corporation that is publicly held.

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INTEREST OF *AMICUS CURIAE*[1]

The Atlantic Legal Foundation is a nonprofit, nonpartisan public interest law firm that provides legal counsel, without fee, to scientists, educators, and other individuals and trade associations. The Atlantic Legal Foundation's mission is to advance the rule of law in courts and before administrative agencies by advocating for limited and efficient government, free enterprise, individual liberty, school choice, and sound science. *Amicus curiae's* leadership includes distinguished legal scholars and practitioners from across the legal community. Of particular significance here, the Atlantic Legal Foundation has served as counsel for student plaintiffs in a number of cases involving constitutional implications of "compelled speech" through mandatory fees, including *Carroll v.*

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[1] Pursuant to Rule 37.2(a), all parties have consented to the filing of this brief. Copies of those consents have been lodged with the Clerk. *Amicus* has given notice of intent to file this brief to all parties more than 10 days before this brief was filed.

Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

Blinken, 957 F.2d 991 (2d Cir. 1992); *Galda v. Rutgers*, 772 F.2d 1060 (3d Cir. 1985); and *Galda v. Bloustein*, 686 F.2d 159 (3d Cir. 1982).

REASONS FOR GRANTING THE PETITION FOR A WRIT OF CERTIORARI

INTRODUCTION

Public universities may impose student activity fees when their method of allocation is "viewpoint neutral" and if the method of allocation is not viewpoint neutral, may, but need not, substitute an "optional or refund system" for viewpoint neutrality. *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 231-232, 235 (2000).

City University of New York ("CUNY") colleges[2] fund NYPIRG, the New York counterpart by a special referendum, whose sole question is whether a specific fee – $5.00 per semester (Pet.App. 156a-157a, 163a, 169a, 89a-92a) – should be added to the students' tuition and fees bill each semester to support the New York Public Interest Research Group ("NYPIRG"), acknowledged to be a political advocacy organization. The fee is mandatory – students must pay student activity

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[2] The individual defendants are member of the Board of Trustees of CUNY.

fees as a condition to register for classes and to obtain transcripts. Pet.App. 188a. The CUNY Board of Trustees has "earmarked" the "NYPIRG fee" to NYPIRG itself (*see* Pet.App. 90a). Because referendum-based funding of such ideological groups is not viewpoint neutral, *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. at 235, CUNY colleges have established a "refund system" for the "NYPIRG fee" as an "alternative protection."

The plaintiff students in this case challenged the fee, complaining, *inter alia*, that the refund mechanism utilized by CUNY does not adequately protect their constitutional First Amendment right not to be compelled to support political speech with which they disagree and that CUNY's refund system results in a "gift" to NYPIRG.

I.

THE COURT SHOULD GRANT THE PETITION TO CORRECT THE LOWER COURTS' INCORRECT READING OF *SOUTHWORTH* AND TO PROTECT THE FIRST AMENDMENT RIGHTS OF DISSENTING STUDENTS

A. CUNY's Refund System Provides Inadequate Notice.

The district court and the Second Circuit misconstrued *Southworth* in approving this refund system without requiring the CUNY colleges to include any of the First Amendment safeguards modeled on the labor union and bar association dues line of cases, particularly *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

The lower courts reasoned that *Southworth*'s rejection of *Abood-Keller*'s "germaneness" requirement in the student activity fee context foreclosed imposition of a requirement for effective notice to students of their right to a refund, adequate notice of how to obtain a refund, and an efficient refund system.

While *Southworth* expressed concern that the *Abood-Keller* remedies for university-based student groups -- *i.e.*, pro rata refunds for non-germane speech – could be so "disruptive and

expensive that the program to support extracurricular speech would be ineffective," 529 U.S. at 231-32, *Southworth* did not address the issue whether the a university's refund system, the purported substitute for viewpoint neutrality, provides adequate alternative safeguards. *Southworth* thus does not preclude the application of *Abood-Keller* standards to the "type of optional or refund system" the university implements." *Id.*

The Second Circuit's misinterpretation of *Southworth* has broad and severe consequences for tens of thousands of CUNY students who are compelled to fund NYPIRG based on the results of referenda, provided that the component college makes a refund nominally, but not effectively, available.

At Brooklyn College, the specific unit of CUNY involved in this case, constructive "notice" that the NYPIRG fee[3] is refundable is dispersed on three non-sequential and widely separated pages in a 406-page "Academic Bulletin." Dissenting students are required, each semester, to appear in the offices of NYPIRG or at the college's Central

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[3] In fact, students' tuition and fees bills list the overall student activity fee, but not the portion allocated to NYPIRG. Of special note, the bill does not indicate that there is a separate NYPIRG fee, how much it is, nor that it is refundable. Pet.App. 197a-199a.

Depository during an unspecified two-week period to complete and submit a NYPIRG refund request form.[4] Several weeks later, NYPIRG mails a refund check, without interest (Pet.App. 63a), to the student's home.[5]

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[4] The "notice" that the NYPIRG fee is refundable is contained in the college's academic bulletin. Pet.App. 69a-83a. The existence and amount of the "NYPIRG fee" is listed on page 29 in a section entitled "Tuition and Fees." Pet.App. 69a-74a. On page 32, in a subsection entitled "Refund Policy" (which addresses refunds of tuition in cases of student withdrawal), the bulletin states: "Refund of the NYPIRG fee may be obtained during a two-week refund period set by the organization." Pet.App. 78a. On page 61, an unrelated section of the bulletin containing a quarter-page description of NYPIRG indicates that the NYPIRG fee is refundable at the offices of the NYPIRG chapter or the college's Central Depository during a "two-week period." Pet.App. 82a. Students must complete a NYPIRG refund request form providing their personal information, including home address. Pet.App. 134a, 137a, 230a. Neither CUNY nor Brooklyn College have set a time for NYPIRG to respond to refund requests. The courts below presumed that several weeks or more pass before NYPIRG mails a check to the student in the amount of the original fee, without interest. Pet.App. 21a-22a, 138a.

[5] The system is so arcane and inefficient that only *one or two* students each year avails herself of this refund

(continued...)

This Court should grant the petition because the courts below effectively strips dissenting students of protection of their First Amendment speech rights by sanctioning an obscure and onerous refund system. If the decision below is allowed to stand, CUNY students will have no effective remedy against forced funding of the viewpoint discriminatory NYPIRG fee. The precedent established by the decisions below may also jeopardize the First Amendment rights of students at the State University of New York and at public universities in other States where PIRGs have numerous campus chapters and collect millions of dollars in student fees.[6]

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[5](...continued)
system. *See* Pet.App. 135a.

[6] CUNY serves over 231,000 degree-credit students and 230,000 adult, continuing, and professional education students, Pet.App. 151a-152a, so the number of students affected and the amount of money involved is not "*de minimis*" as the district court seemed to believe. *See* Pet. App. 21a-22a. ("So we're talking about an alleged involuntary loan of $5 for 3 or 4 months [at a time] which by my calculation is at 2 percent [interest] . . . Did you ever hear the maxim[] [*de*] *minimis non curat lex*?"). The District Court characterized the dispute in this regard was a "trifle" over "as much as a nickel" or "50 cents." Pet.App. 64a-65a

In *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217 (2000), this Court held that "objecting students may insist upon certain safeguards with respect to the expressive activities which they are required to support." *Id.* at 229, and "The principal standard of protection . . . is the requirement of viewpoint neutrality."*Id* at 233. The Court noted that the student referendum mechanism of the University of Wisconsin's program "appears to permit the exaction of fees in violation of the viewpoint neutrality principle." *Id.* at 220.

CUNY has adopted a "refund system" for the referendum-based NYPIRG fee as an alternative to viewpoint neutrality. Having done so, Petitioners argue that *Abood v. Detroit Bd. of Educ.*, 431 U.S. 209 (1977), *Keller v. State Bar of Cal.*, 496 U.S. 1 (1990), and their progeny establish the appropriate standard for evaluating the constitutional adequacy of CUNY's notice and refund procedures; and that the most pertinent case *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

The District Court held that "the union cases simply do not apply under *Southworth*" even when the University itself opted for a refund system. *See* Pet.App. 63a. The District Court framed the constitutional standard for evaluating CUNY's refund procedure as whether it was "sufficiently burdensome in some way as to take it out of *Southworth*." Pet.App. 62a, and held that the

University's refund system for the NYPIRG fee was "entirely unobjectionable." *Id.*

Amicus believes the courts below erred in their interpretation of *Southworth* and in ignoring the standards developed by this Court in other cases treating compelled financing of political speech. The District Court interpreted *Southworth* as limiting the protection of students' First Amendment rights to "viewpoint neutrality" and declined to impose an effective "optional or refund system."

Southworth, contrary to the lower courts' understanding, stands for the proposition that when the method of allocating student fees to an ideological organization is not viewpoint neutral, as when it is imposed by a referendum, a public university must adopt an alternative system that adequately protects the First Amendment rights of dissenters, such as an "optional[7] or refund system." *Southworth* at 232. A refund system must effective and not ephemeral, obscure or overly complicated, for, as this Court has held, "First Amendment rights are fragile and can be destroyed by insensitive procedures," *Hudson*, 475 U.S. at 303 & n.12 (internal citations and quotation marks omitted). An incomplete or recondite notice,

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[7] A system which allows the dissenting student to elect not to pay that portion of the student fee "up front."

combined with cumbersome procedures, does not pass constitutional muster.

Amicus agrees with Petitioners that CUNY's system consists of uninformative or inaccessible notice and its refund procedures are unnecessarily cramped and cumbersome.

The reasoning of the courts below, that *Southworth*'s rejection of the "germaneness" requirement to the student activity fee makes the holdings in the union and bar association dues cases irrelevant is inconsistent with *Southworth*. In *Southworth* the Court expressed concern that deciding what activities are "non-germane" to a university's mission as a step in calculating the refunds for non-germane speech (the *Abood-Keller* remedy for union or bar member dissenters) might be so "disruptive and expensive that the program to support extracurricular speech would be ineffective," and inapplicable given the unique status of educational institutions. 529 U.S. at 231-32. However, the issue in this case is not whether NYPIRG's activities are "germane" to the educational mission of CUNY, because the NYPIRG fee is already segregated by the university. CUNY has prescribed the refund as its way of providing a system that is purportedly equally protective of dissenters' rights as would be a viewpoint neutral allocation of funds to student activities. The issue in this case is whether the university's refund system does provide adequate

safeguards. *Southworth* does not foreclose an examination of the effectiveness of the CUNY-NYPIRG refund system, as the lower courts held; rather it mandates it. This Court's precedent in the *Abood-Keller* line of cases prescribing the requirements of a refund system -- not the "germaneness" criterion -- are therefore relevant when the a public university imposes a referendum-based fee and a refund system to "satisfy" First Amendment requirements.

Hudson establishes three basic requirements: (1) the refund procedure must be "carefully tailored to minimize the infringement" on dissenting employees' exercise of their First Amendment rights to object, 475 U.S. at 303; (2) the individual notice provided must contain adequate information, *id.* at 306; (3) the refund system may not use a "pure rebate approach," *i.e.* "a forced exaction followed by a rebate equal to the amount improperly expended," *id.* at 303-06, lest "the [student organization] obtains an involuntary loan" for expressive activities to which the student objects and poses "the risk that dissenters' funds may be used [even] temporarily for an improper purpose." *Id.* at 304, 305. There is, we submit, no principled reason these criteria cannot and should not apply to refunds of non-viewpoint neutral university fees. They certainly do not impose an undue burden on the university or on NYPIRG.

While the notice and procedures for dissenting students need not be identical to those for "agency fee" employees or members of the bar, the procedures must satisfy the constitutional minimum standards appropriate in the university context. This is a two-way street, for just as universities need not justify the "germaneness" of a funded student group's activities, a dissenting student should not be charged with the attention to detail and the same ability to parse the university's publications to piece together instructions for obtaining a refund as might be expected of an attorney who seeks a refund of bar dues.[8]

B. CUNY's No Interest Refund Violates Students' Rights.

The refund NYPIRG makes to students months after the students are required to pay tuition and fees at registration each semester is only the fee actually paid, without interest. It is "a forced exaction followed by a rebate equal to the amount improperly expended," and the very sort of "pure

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[8] As noted, the Brooklyn College Academic Bulletin spreads relevant information about refund of the NYPIRG fee on three pages in a 406-page document without cross-references. No single page provides complete and accurate notice of the availability of a refund and the procedure to obtain one.

rebate approach," condemned by this Court in *Hudson*, 475 U.S. at 303-06, because "the [student organization] obtains an involuntary loan" for expressive activities to which the student objects and poses "the risk that dissenters' funds may be used [even] temporarily for an improper purpose." *Id.* at 304, 305. Contrary to the lower courts' inference, there is no requirement that the *Hudson* criteria apply only if the exaction is "substantial."

The apparent reliance by the district court on the fact that the interest on the refunded NYPIRG fee would be small is completely inconsistent with a proper analysis of the constitutional question. Indeed, as this Court held in *Elrod v. Burns*, 427 U.S. 347, 373 (1976) "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." Moreover, even in "practical" terms, the "involuntary loan" of 50 cents by a student at a public university might be as important to her as is the amount of interest on the "non-germane" portion of dues exacted from a non-member of the union.

Amicus believes that CUNY's notice and refund procedure at Brooklyn College does not satisfy the Constitutional requirements as prescribed in this Court's compelled speech cases.

One way of providing adequate notice and an administratively simple process ,and avoiding the

interest free loan is the "negative check off" adopted by another state university with referendum-based student fee-funded PIRG chapters. Rutgers, the state university of New Jersey, adopted a negative check-off system in the wake of *Galda v. Rutgers*, 772 F.2d 1060, 1068 and n.5 (3d Cir. 1985) – Rutgers explicitly notifies students on their tuition bills of the existence and amount of the PIRG fee and includes a "negative check-off" box, which allows students to deduct the fee at the time he pays his semester tuition and fee bill, either on-line, by mail or in person. Pet.App. 217a-229a. That another neighboring public university has implemented such a system demonstrates that it is neither inconvenient nor burdensome to the educational mission of the public university.

Alternatively, payment of interest on the refunded NYPIRG portion of the student activity fee would cure the "interest-free loan" problem; but that would be only a partial cure, for it would not, in itself, provide the adequate notice and simplified process that *Hudson* requires.

CONCLUSION

The Court should grant the petition to correct a seriously erroneous interpretation of this Court's precedents and because that misinterpretation results in violations of students' First Amendment rights.

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Respectfully submitted,

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